European Investment Bank

CM Complaints Mechanism



Complaints Mechanism - Complaints Mechanism- Complaints Mechanism- Complaints Mechanism

Bujagali Hydroelectric Project

Jinja, Uganda

Complaint SG/E/2009/09

CONCLUSIONS REPORT

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Prepared by

Complaints Mechanism

Esther de Kruijff
Roberto Rando
Monique Martins

External Consultants

Control Risks

Graham Hadley
Dennis Creamer
Eric van der Elst
Alex Muhweezi

Felismino Alcarpe
Head of Division
Complaints Mechanism

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 receipts 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

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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 clarificationsof, and the on-goingdiscussions 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[1].

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.

[1]The "Agreed Curve"[1], 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/SectorialEnvironmental 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-financers, 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 it 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 Jaja Budhagaali and Lubaale Nfuudu. 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 - Jaja Budhagaali – 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 Jaja Budhagaali as a recognized spiritual leader over the last decades and notes that the appeasement ceremonies as requested by Jaja Budhagaali 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: 2December 2009

ProjectStatus: 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 tenderin 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 stationfor 30 years, using water storage equivalent to 5 hours of full load operation (pondage plant). The reservoir will occupy an area of 3.9 km2, 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 Riverafter theLake 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"[2], 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).

[2]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 km2, 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 tothe least possible environmental and social footprint compared to alternative sites further downstream on the Nile. Based on theflooded 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. Furtherinitiatives 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 institutionsas a basis for its investigation. The current report will try to not repeathistorical 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-CMmet 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 itconducted 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**

Allegations:
The project will benefit less than 5% of the population There is a high risk that the price of the energy produced will not be affordable 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. 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."

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 aleast cost option for power generation and can therefore not be considered as a distribution project. In a power generationproject, 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. <u>Economic soundness of the project:</u>

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 leadto 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 standardsat 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**

Allegations:
Naminya resettlement area: resettlement of displaced people was not done in accordance with EIB policies and conditions agreed upon by AES and/or BEL Evictions: affected people were not granted fair and adequate compensation Violation of domestic law 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. World Bank Inspection Panel findings / Complainant Conclusions: People affected by the project were not compensated in a fair and adequate way, in violation of the World 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.

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 factualfindings (not compliance oriented) of the WB IPRalso 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 OffsetSustainable 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 asthe 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 constructedin the 1950s and 1990s respectively, control the flow of water from Lake Victoria into the Nile, arethe 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 changeon the release of waterduring 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 hadalready 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[3]. 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 Mayand 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 USh 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.

[3]In particular, thatthe 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 understandingdespite 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 USh 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 wereunder construction, and the booster station and reservoir to serve Naminya were under construction as well. BEL expected that the program woukdbe 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 proposalsneed to be provided before presentinga 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 REABoard. 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 wasnot 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 beenstocked in early September 2010with 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. Bukenya 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 PAPsthrough 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 latestsituation 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 2nd quarter of 2010 BEL went into partnership with Uganda Finance Trust and the institution was given USh 212,000,000 to loan on to the PAPs. To date (end of 2010), USh 238,470,000 were disbursed in the project affected villages to 384 PAPs, with USh 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 projectbut carried out by a different promoter. Itis 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 considerit 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 beenwidely 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 accessibly 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-CMthe 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 usingtheir influence to block PAPs from seeking redress through the intended grievance channels and in some instances preventingPAPs 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'sstrong 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. Althougha 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-CMthat it wasthe 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 time 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, Muwema & Mugerwa Advocates & Solicitors, representing the 557 people of the class action, informed the EIB-CMthat representatives from BEL contacted them to obtain the list of plaintiffs held by the counsel. Furthermore the EIB-CMwas 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-CMvisit there had been no response from BEL or UECTL.

8.5.13. Currentlythere remainuncertainties 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 it 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 positivemove 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 SALINI STUDY) of blasting complaints is flawed and unreliable due to data errors and inconsistencies.Moreover, the SALINI 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 Revey Associates Inc (REVEY 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 REVEY STUDY the Borrower and its Contractor, undertook the necessary steps to reduce the air-overpressure generated during blastsby 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 SALINI 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 REVEY 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 thatpotential 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 Jaja Budhagaali) 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-CMthat Jaja Budhagaali 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 canbe 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-CMtook 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 Lubaale Nfuudu, 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 ensures such "pari passu" treatment between Nabamba Bujagali and Lubaale Nfuudu.



Meeting Jaja Bujagali and one of his wives

8.7.5. In line with discussion previous 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 Jaja Budhagaali and Lubaale Nfuudu. 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-CMhas been informed that one of the mediums - Jaja Budhagaali – has not responded to the formal invitation by the Busoga Kingdom to participate to the appeasement ceremonies. Jaja Budhagaali 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 Jaja Budhagaali, thathe didnot to wantedbe 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 (Jaja Budhagaali and Lubaale Nfuudu) recognising bothas the spiritual caretakers of Bujagali spirits.

8.7.8. The ceremonies requested by Jaja Budhagaali 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 Jaja Budhagaali 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 Jaja Budhagaali as a recognized spiritual leader over the last decades and notes that the appeasement ceremonies as requested by Jaja Budhagaali 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-CMfact 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-CMurged 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 timepromoting 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-CMrecommends the Bank, in co-ordination with the other providers, to havediscussions 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-CMis 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 thatthe Bank endeavoursthat:

- 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

CONCLUSIONS REPORT

PART II – SUPPORTING INFORMATION

1. ECONOMIC PROSPECTS, AFFORDABILITY AND SUSTAINABILITY

1.1. Scope of review

1.1.1. The purpose and scope of the review is to provide a technical appraisal of the capital costs of the project, including the associated transmission connection project (BIP) and an up-to-date review of the economic prospects, including affordability and sustainability issues, for Bujagali. The review takes into account the likely total capital cost, impact on tariffs, and the costs/benefits Uganda may expect.

1.1.2. Main source documents for the review have been:

- Updated estimates of gross project revenues provided under cover of BEL letter to EIB CM of June 17 2010;
- The Complaint;
- "Control Risks" Report to EIB, 1 July 2010;
- EIB papers giving the background to their investment in BHP, notably Fact Sheet B of the Ops B Financial Report, March 26 2007; and the final Ops B Financial report of 19 September 2007;
- "The Renewable Energy Policy for Uganda" GOU report of November 2007 (REP);
- "The Development of a Power Sector Investment Plan" (PSIP) draft report by Parsons Brinkerhoff to GOU, 8 December 2009;
- Government of Uganda (GOU) National Development Plan (NDP), April 2010;
- The World Bank Inspection Panel (WBIP) Report on Bujagali to WB Executive Directors, of September 8, 2008;
- Annex B to the WBIP report: "Independent Review of Contractual Arrangements". Paragraph 1.1 of that report cites the principal contractual project documents, and those underlying the WB's and African Development Bank's (AfDB) investments.

1.1.3. This Chapter is organised in 5 sections following this introduction: Background; Update on Project Costs; Analysis; Concluding Observations. An Executive Summary and relevant recommendations are provided in Part I. The analysis and conclusions must be qualified with reference to the data on which they are based. Whereas we have been able to obtain up-to-date information on capital costs and forecast project revenues, we have not so far been able to obtain from GOU comparably up-to-date data on the Uganda electricity sector. The GOU NDP and PSIP provide partial information only on: national tariff levels and forecasts; sector accounts/forecasts; financial recovery rates/forecasts (ie the percentage by value of electricity sent out from power stations, actually recovered from paying customers); Government subsidies/forecasts; and hydrology. This means that quantification of the economic impact of the project is approximate, rather than fully authoritative. However, it is unlikely that comprehensive updated sector data would invalidate the broad conclusions reached.

1.2. Background

1.2.1. In July 2007 EIB approved a loan of up to $130m to the BHP project, as part of a co-financing structure with the WB, AfDB, other national financing agencies and commercial banks, supporting the project equity-holders and developers, BEL. The decision was made in accordance with the objectives of the Cotonou Partnership Agreement, which are to support projects that deliver sustainable economic, social and environmental benefits, including energy efficiency and climate change mitigation. Within this, the Bank concentrates on fostering private sector-led initiatives that promote economic growth and thus help to reduce poverty.

1.2.2. In announcing their decision, the EIB added that "EIB disbursements should occur in line with those of the other co-financiers, in particular the World Bank Group, in order to ensure a coherent approach to any recommendations the World Bank's Inspection Panel may express in the future and their full consideration in the project". This was a reference to the investigation by the WBIP of a complaint lodged with the WB in March 2007, which concentrated (like the present complaint to EIB) mainly on social and environmental issues, but also questioned the sustainability and affordability of the project especially under low hydrology conditions.

1.2.3. The EIB undertook a very comprehensive appraisal of the project during 2007, addressing the 2 key objectives:

- Is the project likely to prove a sound financial investment, providing a satisfactory return?
- Will it meet the broader objectives associated with the Cotonou Partnership, (outlined in para 3.1 above)?

1.2.4. In its economic assessment, the Bank drew heavily on the study by Power Planning Associates (PPAss) of generation options, February 2007. The Bank clearly recognised that in the case of a major power project, selling its output over a long period to the State electricity utility, in some respects the two objectives above are in conflict – the more secure and generous to the sponsors and lenders are the terms of power sales, the higher may be the costs and risks borne by the power purchaser and thus electricity consumers, which (especially since the utility's risks in this case are under-written by the host Government) may potentially jeopardise the broader social and economic gains expected from the project.

1.2.5. In particular, the Bank's appraisal noted:

- GOU currently subsidises tariffs, enabling UETCL to meet its payment obligations, but the subsidies should not be required after 2011, particularly since connections should increase and the recovery rate was forecast to increase from about 60% to 77% (thus increasing sector revenue) by the time Bujagali comes on stream.
- "GOU absorbs major project risks"
- Affordability could be an issue in years 12-16, when the capacity charge would be set at a high level to repay debt;
- For this reason "a re-negotiation risk cannot be excluded"
- Capital cost increases had already occurred, but "the maximum affordable (Bujagali) generation cost ...is 13.4 USc" – a level likely to be exceeded in USh in at least the final years of debt repayment.
- "... the project will not be sustainable in the long run if insufficient water flow through the Nile makes power generation from the Bujagali plant unaffordable".
- Nevertheless, "....whatever hydro conditions, the project will contribute to reducing the average price of electricity in Uganda, to the extent it replaces production from thermal plant".
- On the review of generation options (undertaken by PPAss, consultants for the WB), which had selected Bujagali as least-cost: "....since the economic analysis ignores the specific financing conditions, it does not allow concluding that the most advantageous project is per se affordable. The affordability - hence viability of the least cost project - has to be assessed in the light of the tariff requirements on a year-by-year basis"

1.2.6. The Bank concluded that the project should be supported because it had been identified as the least-cost option for new generation; it would provide power from an indigenous and renewable resource with low CO2 emissions, re-utilising Nile water; it was needed to meet acute power shortages and growing future demand; and "by implementing the….project as a Public Private Partnership, Uganda avoids an increase of the country's debt burden." Its views on tariffs and affordability might be summarised as a judgement that there were reasonable prospects that the project would be intra-marginal. Because of the peak costs and risk to affordability foreseen in years 12-16, EIB's senior loan was structured with a flexible tenor allowing for extension of the repayment period from years 16-20 in certain adverse circumstances for the project. The purpose of this was to soften the adverse impact of repayment of debt on tariffs or subsidies.

1.2.7. In December 2007 the EPC contract was finally signed, at a price of $564m, as compared with the price of $520m at the time of the EIB decision, and the originally accepted tender price of $467m. Financial close occurred in January 2008, at which time construction work had already been underway for some months.It should be noted that the Bank project cost include technical contingencies reflecting possible future costs increases and that the final cost as currently estimated is 9% higher than what was assumed by the Bank in USD terms (cost in euros would be lower).

1.2.8. The WBIP issued its report in September 2008. On the economic issues, it made the following summary observation, under "Systemic Issues" (para 620):
"**… energy production requires considerable care in order to ensure that social, economic and environmental aspects are properly considered in line with Bank policy, to adhere to sound development practices and avoid situations where costs, including social and economic costs, outweigh the benefit from what are usually sizeableinvestments".**This follows a number of specific criticisms of economic aspects of the project in the body of the report, which are supported in detail by Annex B to the WBIP Report. The criticisms can be summarised under 3 heads:

1.2.9. **Project Selection.** In analysis of generation options prior to the investment decision, WB management had not ensured that the comparison of alternatives could be seen to be transparent and objective. In particular, known cost increases in BHP had not been taken into account, associated transmission costs had been under-estimated, and insufficient attention had been paid to off-grid distributed generation options, which might have addressed more directly local and rural poverty.

1.2.10. **Project Appraisal.** In the calculation of costs, benefits and impact on tariffs which underlay the investment decision, WB management had in a number of areas over-stated benefits and under-stated risks and costs. In particular, the economic analysis ignored known capital cost increases, was too optimistic in claiming that the project would cause tariffs to drop by 10%, neglected the risk that either tariffs or subsidies would have to rise in order to pay the capacity charge, over-estimated likely sector revenues after losses, disregarded the risk to affordability represented by depreciation of the USh against the $, and took insufficient account of the impact of prolonged low hydrology.

1.2.11. **Project Structure and Management.** The use of competition to select the lowest bidder had been negated by allowing upward cost drift after selection. A cost-based formula, as opposed to a cap, had been included in the Power Purchase Agreement (PPA), for determination of the capacity charge. Buy-out terms were disadvantageous for the purchaser. Overall, in giving security to investors and lenders, the project structure and contractual base had allocated high risks to the power purchaser UETCL and its guarantors, GOU and the WB. This "**increases the risk that the GOU will have to make payments under its guarantee and/or increase tariffs or subsidies. In this context, the project may not achieve the broad objective of sustainable development and poverty reduction embodied in Bank policies".(pp xiii-xiv, Executive Summary)**

1.2.12. The economic section of the summary report (p xlii) concludes as follows:
"The Panel is concerned that any additional GOU resources that are spent in the financing of development and operation of this project may lead to decreased resources available for social and other priority development programmes"

1.2.13. Because the project documents had been signed, terms fixed and work had already commenced by the time the Panel reported, its report did not identify any specific action which could be taken to change the economic terms. The WB Management Response focussed on its action plan which picked up other aspects of the Panel's report, and was largely silent on the economic issues, but Management did, at a subsequent Board meeting, commit to address other issues, including the analysis of economics and risk. The main value of the economic aspects of the report given its timing was in the applicability of its findings to other large capital projects particularly in the power sector. Subsequent developments on Bujagali itself have underlined the importance of the warning notes struck by the WBIP.

1.3. **Update of project costs**

At appraisal in March 2007, the dam construction was scheduled to take an estimated 44 months, with a target date for commissioning in mid-2011. The cost of the project was estimated at about USD 786 million, of which about USD 623 million were direct costs, including about USD 520 million for the EPC contract. Cost estimate of Transmission connection line project at appraisal was about USD 28 million.

1.3.1. *ECP*

1.3.1.1. The EPC contract was awarded in December 2007 to Salini-Hydro of Ireland, a subsidiary of Salini Costruttori SpA of Italy for an amount of about USD 564.4 million, representing an increase of about USD 44.4 m on appraisal estimate. The project construction schedule remained at 44 months. It seems that the geotechnical investigations were not considered fully accurate, as substantial contingency provisions (USD 43.5m) were allocated to cover possible surprises in ground condition.

1.3.1.2. In November 2009, in conclusion to the Fourth Joint Lenders Supervision Mission from 9 to 13 November 2009, an Aide Memoire was signed between the GoU and the Joint Lenders. The Aide Memoire mentions that, due to unforeseen subsurface rock conditions, a delay of about 10 months is necessary to complete the works, and Change in Works (CIW) claims have been accepted from the contractor in an amount of about USD 54.1 million, thus driving EPC costs to USD 618.5m. In addition, due to the delay in construction schedule, Interest during Construction was increased by USD 9.6 million. The Aide Memoire, with a view to maintaining the project cost at USD 860 million, proposes to fund these increases in ECP costs from the existing contingency provision (USD 43.5m), augmented with the working capital provision (USD 19.5m) and the 5 km Transmission Line provision (USD 12m). In addition, it proposes to replenish the contingency provision from the Debt Service Reserve Account (USD 44.0m)[4].

1.3.1.3. The design of the remaining works has indicated few changes from the original design and the works were less complex. The Borrowerwas nevertheless expecting another USD 10-15 million in additional CIW claims. More precise estimates were required by the Joint Lenders Supervision Mission from the Engineer, Colenco. To date, these estimates have not been made available to the CO.

1.3.1.4. Following the Joint Lenders Supervision Mission, an Agreement on Changes in the Works and Release of Claims was signed between BEL and its Contractor in December 2009, and approved by the Lenders. This agreement agrees on the settlement of 20 past CIW claims, albeit with reservations from the Contractor on some of them for an aggregate amount of about USD 54.1 million, and set the completion date of the works to 8 April 2012. The agreement also recognizes that a few claims, in an amount of about USD 4.7 m, outside claims on VAT refunds, remain unresolved.

[4] Uganda: Bujagali Hydropower Project and Bujagali Interconnection Project, 9th -13th November 2009, Fourth Joint Lenders Supervision, Aide Memoire

1.3.1.5. In July 2010, a cost update forecast for EPC was received from BEL, in the amount of USD 613.2m, that is a lesser amount than the agreed contract amount augmented with the accepted CIW claims (USD 564.4m + 54.1m = 618.5m) reported in the November 2009 Aide Memoire and the December 2009 Agreement. Additional CIW claims in the range USD 10-15m due to unexpected ground condition on the East bank are still considered by BEL as probable.

1.3.2. *BIP*

1.3.2.1. Jyoti Structures Ltd of India is the electricity transmission equipment supplier in charge of building the transmission line, and BEL is responsible for monitoring the installation of this line on behalf of UETCL, who will own and operate the line. The construction cost of the line is now estimated (Nov 2009) at about USD 47 million.

1.3.2.2. As of November 2009, the completion rate of the project was estimated about 48%. The project completion date of July 2010 was then considered attainable.

1.3.3. *Cost estimates*

1.3.3.1. Building on the information available at the time of the EIB appraisal, EPC and Project cost estimates have been updated, integrating the findings and projections of the fourth Joint Lenders Supervision Mission, and the information included in BEL documents and the Agreement signed in December 2009. Costs for which no information has been received have been kept as per appraisal estimate.

1.3.3.2. It should be noted that among the documents received, the numbers seldom tally, and some judgement has had to be exerted to arrive at a fair estimate of the updated Project costs. Reconciling all amounts would require an audit of project accounts, an undertaking that goes beyond the scope of this consultancy.

1.3.3.3. ECP costs have been taken as the December 2007 contract amount to which have been added the claims detailed in the settlement agreement of December 2009, augmented with the disputed claims of Schedule 2.1 valued by BEL at USD 4.7m. The further USD 10-15m CIW claims foreseen by BEL have been included in the contingency provision, replenished according to the Aide Memoire by transfer of funds from the provision for other contingencies, debt service reserve account, and working capital.

1.3.3.4. Accepting that the geotechnical investigations prior to construction works have been incomplete, the CIW claims are not uncommon. Given the decision taken to replenish the contingency provisions, one could be comfortable that further cost increase, if any, will remain within the limits of the replenished contingency provision.

1.3.3.5. The contract price for the construction of the transmission line under the BIP project is estimated in the Aide Memoire at about USD 47m, an increase of about USD 23m compared to the cost mentioned in the EIB appraisal documents. A 15% technical contingency provision has been added to that base cost in the updated estimate shown at Table 1 below. This estimate does not include resettlement/compensation costs, valued at about USD 17m at project appraisal (May 2007)[5]. The cost of the transmission project seems rather high, compared to prices observed in neighbouring countries.

[5] AfDB, Appraisal Report for the Bujagali Interconnection Project, May 2007, quoted by the Inspection Panel Investigation Report, p.98

1.3.3.6. Table 2 shows the annual outlays for the EPC contract, integrating the unsettled and probable future CIW claims.

TABLE 1: PROJECT COST ESTIMATE SUMMARY (UPDATED, NOV 2009)

INVESTMENT COSTS SUMMARY	**NOV**	**2009**
Hydropower Plant Costs	**% of Total**	**kUSD**
Studies, design, development costs, incl. environment	3,7%	31 992
Project management and supervision	1,6%	14 166
Land	2,3%	20 000
EPC contract *)	73,6%	564 400
CIW Claims *)		58 844
Subtotal Base Costs	81,3%	689 402
Technical contingencies	5,3%	55 556
Subtotal Direct Costs	86,7%	744 958
Price contingencies	0,0%	-
Subtotal	86,7%	744958
Lenders fees and IDC *)	13,3%	114 652
Subtotal	100,0%	859 610
Debt service reserve account *)	0,0%	-
Working capital *)	0,0%	-
Grand total	**100%**	**859 610**
Transmission Line Costs Construction*)		**kUSD**
Contract price, Jyotii Structures Ltd.		47 000
Series reactors, protection relays		
Subtotal		47 000
Technical contingencies -15%		7 000
Total		**54 000**

*) as per Aide Memoire between GoU and Joint lenders November 2009
**) Agreement between BEL and Contractor December 2009

TABLE 2: EPC OUTLAYS (UPDATED, JULY 2010)

2007	2008	2009	2010	2011	2012	Total
171 378	152 465	151 359	77 024	60 933	10 085	623 244

1.3.4. *Project timetable and output*

1.3.4.1. Project completion, originally scheduled for mid-2011, is now envisaged for April 2012, with the commissioning of three turbines out of five. The project is expected to be fully completed by the end of 2012, with its five turbines in operation. As a result, no revenue can be expected for 2011, and only 3/5 of capacity will be available from April to the end of 2012. The present timetable seems realistic, as the works remaining to be executed are considered less complex.

1.3.4.2. To date, no information has been received as to the progress of the BIP, due for completion in July 2010. BEL is managing on behalf of UETCL the construction of the lines. It seems that delays in project implementation could result from the disputes between UETCL and the project affected persons (PAP). Chapter of the present report shows that compensation issues related to the BIP project shows that there remains some disputes between UETCL and PAPs on the level of compensation. The impact of these disputes on project completion date is not clear. BEL's updated revenue projections received in June 2010 indicate for the year 2012 UETC Line Construction management Fee, which would imply that some construction activity would still go on in 2012.

1.3.4.3. The installed capacity of the project is 250 MW, and the available capacity is assessed at 200 MW. In low hydrology, the annual firm electricity output of the project is rated at 1198 GWh anually, while during high hydrology, the annual firm output is evaluated at 2132 GWh, with probabilities of occurrence estimated at 79% and 21%, respectively. In the World Bank Project Appraisal Document (PAD), the retained annual electricity outputs are lower, to allow for maintenance periods, by 2.75% to 1165 GWh, and 6.53% to 1991 GWh, respectively6.

1.3.5. *Operation and Maintenance Costs*

1.3.5.1. In the EIB Appraisal Report, project operation and maintenance costs are estimated at a flat 2% of total capital costs. In the PAD, besides the above mentioned decrease in output, the Profit and Loss Statement for BEL shows a variable amount, in the range USD 5760k-12159k, is allocated annually as 'Total Operating Costs'[7]. The basis of computation of these operation & maintenance costs is not given in the report, except for a reference to the PPA: **'As per the terms of the PPA, the company receives a monthly capacity payment that is indexed according to US Producer Price Index (subject to a maximum increase of 0.85% over one quarter and a maximum increase of 3.2% over a 12 month period). The actual O&M will vary due to the scheduled maintenance that occurs every other year over the project's life and major overhauls every eight years. In addition to this scheduled maintenance, O&M costs include annual routine equipment maintenance.'**[8]

1.3.6. *Sales of electricity -Tariffs*

1.3.6.1. The above mentioned Profit and Loss Statement indicates the annual Gross Revenues of BEL, 'in the form of annual capacity payments in respect of generating capacity made available to UETCL. The annual capacity payments are payable on a monthly basis by UETCL upon the issuance of invoices by BEL. The capacity payment covers all agreed costs associated with the generation of electricity, including the cost of debt, plus an equity return. The capacity payment is calculated according to the detailed provisions specified in the PPA.' Updated projections of revenues have been received in June 2010 from BEL. The revenues for 2012 seem overestimated, as they would imply that BHP would be operational at full capacity from the beginning of the year.

1.3.6.2. While it is true that the PPA places most of the risks on UETCL, it is worth noting that the greater risk to the project is the non completion on time of the transmission line, that is, the impossibility for BHP to sell its electricity. Thus, what seems a leonine clause in the PPA could also be regarded as a strong incentive for the UETCL and the GoU to expedite the implementation of the BIP, and to improve their collection rates.

[6] World Bank, IFC, and MIGA, Project Appraisal Document for the Private Power Generation (Bujagali) project, April 2007, Report No: 38421-UG, Annex 10, p.99
[7] Annex 11, p.101 Bujagali Energy Limited / Detailed Financial Projections - Profit and Loss Statement
[8] Annex 11, p.100

1.3.6.3. Given the nature of the complaint, it would seem interesting to consider the project revenues that would result from the collection charges, that is, the sales of electricity to end-users. The PAD provides data on nominal electricity tariffs for Bujagali[9] from 2011 to 2023, which result in a levelized tariff of USD 0.097/KWh. This data is used to estimate annual project gross revenues for that period of time shown at Table 3 below, assuming that all the firm electricity production is sold and paid for. As a comparison, BEL's revenue projections for the same period are shown at the following line.

TABLE 3: PROJECT GROSS REVENUES FROM ELECTRICITY TARIFFS / BEL GROSS REVENUE PROJECTIONS

	Year	2012	2013	2014	2015	2016	2017	2018	2019
Output	GWh	539	1198	1198	1198	1198	1198	1198	1198
Tariff	USD/kWh	0.117	0.117	0.117	0.117	0.128	0.145	0.147	0.151
Sales	kUSD	63075	140166	140166	140283	153344	173710	176106	180898
Cap.Ch	kUSD	146313	144099	143435	147839	153310	190351	197085	202060

	Year	2020	2021	2022	2023	2024	2025	2026
Output	GWh	1198	1198	1198	1198	1198	1198	1198
Tariff	USD/kWh	0.154	0.157	0.160	0.071	0.071	0.071	0.071
Sales	kUSD	184492	188086	191680	85058	85058	85058	85058
Cap.Ch	kUSD	208494	212912	215282	168882	114256	115832	114855

1.3.6.4. As underlined in the WBIP report, the sales of electricity to end-users at the above tariff fail to cover the capacity payments paid to BEL, indicated in the PAD (Annex 10 p.101) and in the updated revenue projections. It should be noted that the PSIP[10] takes for Bujagali a flat tariff of USD 0.13/KWh, in constant terms, in its modelizations.

1.3.6.5. The construction schedule was in 2009 extended by 10 months to 54 months, so that commercial operation is now expected to commence in April 2012, with three units, the remaining 2 coming on stream in early 2013. This schedule may still be at risk because of delay in completion of the transmission connection, but we do not have up-to-date information on this. Bujagali EPC costs including contingency are now estimated at $745m (compare figures in para 3.6 above). This takes total project costs (excluding transmission but including idc and other BEL costs) to $860m, as compared with $798m in the PAD (although EIB recognised the cost had risen to over $800m at the time of its commitment in September 2007). The present construction cost estimate in now considered to be reasonably robust – certainly in terms of costs to be paid by the customer.

1.3.6.6. BIP capital costs still appear to be subject to uncertainty but current estimates put them at about $47m, as compared to the PAD estimate of $55m, but higher than the earlier PPAss estimate of $28m, referred to by EIB. However (see para 4.5), this seems more likely to be subsidised by GOU rather than directly impacting tariffs.

[9] p.30

[10] Uganda Ministry of Energy and Mineral Development -The Development of a Power Sector Investment Plan for Uganda - Power Sector Investment Plan (PSIP) Draft Report.8 December 2009 -Parsons Brinckerhoff in association with Sunshine Projects.

1.4. **Analysis**

1.4.1. *Tariffs*

1.4.1.1. Arising from the increased capital costs, BEL have updated their annual forecast required revenues through the life of the project. These represent the costs which UETCL, the purchaser, will have to pay through the capacity charge as determined by the provisions of the PPA. (Note that in this PPA, unlike many others, the capacity charge is not fixed in advance but is derived each year from cost-based formulae, thus transferring a significant share of cost risk after operations commence, to the purchaser). UETCL will in turn transfer these costs, via its bulk supply tariff (BST) to the distribution companies who translate the total costs which they face into customer tariffs.

1.4.1.2. These annual gross revenue forecasts are set out in Table 4, along with the comparable figures from the 2007 PAD. The peak years are 2017-2022, when debt repayment schedules are at their peak, followed by a decline until 2027 when the annual figures stabilise at about 60% of the peak for the remaining years of operation. During the 6 peak years, the revenue requirement (on average, about $200m/year) is about 14% higher than was forecast in 2007. The increase in the later years (post-2026) is more marked, being 25-30%.

TABLE 4 - BUJAGALI ANNUAL REVENUE PROJECTIONS 2011-2027 (in kUSD),

2011	2012	2013	2014	2015	2016	2017	2018	2019
82,689	137,158	137,342	137,533	137,729	149,986	170,577	172,616	177,621
-	146,314*	144,099	143,436	147,839	153,310	190,352	197,086	202,060

2020	2021	2022	2023	2024	2025	2026	2027
180,350	184,250	187,099	82,922	81,955	83,376	82,104	76,280
208,495	212,913	215,283	169,180	114,257	115,832	114,855	109,802

Line 1: BEL Gross Revenue forecasts contained in Annex 11, § 10 of the World Bank Project Appraisal Document (PAD), April 2, 2007. Commencement of operation forecast Spring 2011.

Line 2: BEL total revenue forecast dated March 2010. Commencement of operation forecast April 2012.

**appears an over-estimate, since operations will commence only in April, with 3 units only, the remaining 2 being commissioned in 2013.*

TABLE 5 - BUJAGALI ANNUAL IMPLIED TARIFFS 2011-2027 (in USc/unit)

2011	2012	2013	2014	2015	2016	2017	2018	2019
	11.4	11.5	11.5	11.5	12.5	14.2	14.4	14.8
	12.2	12.0	12.0	12.3	12.8	15.9	16.5	16.9

2020	2021	2022	2023	2024	2025	2026	2027
15.1	15.4	15.6	6.9	6.8	7.0	6.9	6.4
17.4	17.8	18.0	14.1	9.5	9.7	9.6	9.2

Line 1: Implied wholesale tariff, assuming low hydrology output/sales of 1198 GWH p.a., from Table 1, Line 1 (2007)

Line 2: Implied wholesale tariff on the same output/sales assumption, from Table 1, Line 2 (2010)

Red indicates peak years. Blue indicates approximate average revenue/ implied tariffs for the remainder of project life.

1.4.1.3. In modelling the economics of the project, the PAD and also the PSIP make reference to a levelised lifetime tariff, this being the tariff which would deliver the required total revenues at the conclusion of the PPA period. The PAD calculated this at 9.7c/unit, increased in the PSIP to 13c/unit (both assuming low hydrology). If a levelised tariff policy were adopted, it would have obvious advantages for the purchaser in smoothing revenue requirements and tariff impact, though Government would then have to make good the financial deficit against BEL's revenue requirement in the early and peak years. It has however been made clear by the WB that the policy would not be to set levelised tariffs but to charge the full revenue requirement in the capacity charge, year by year. This is the assumption which has been adopted in deriving tariffs in Table 5.

1.4.1.4. Implied wholesale prices are given in Table 5, along with the comparable 2007 figures. They have been calculated by dividing revenue required by expected unit output/sales. Forecast output is crucially dependent on hydrology. The PAD calculations were based on an assumption that this would vary over the life of the project to give a mixture of "wet" and "dry" years in the ratio 21/79. In a wet year (high hydrology), output was estimated at 2132 GWH, falling in a dry year (low hydrology) to 1198 GWH. (In the PAD, slightly lower figures than these were used, to allow for plant outages, but it seems more realistic, as in later estimates, to assume that maintenance would be done during natural downtime, so would not further reduce output). Hydrology forecasts have not been updated, but the indications in the NDP and PSIP are that any revision would likely be downward – ie an even higher incidence of dry years. For illustrative (and conservative) purposes, Table 5 assumes annual through-life unit sales at 1198 GWH, which is also the assumption in the PSIP modelling of Bujagali.

1.4.1.5. Table 5 shows the increase in implied wholesale prices since 2007. They are of course in the same percentages as for revenues in Table 2. In the peak year of 2022, the price is now 18.0c/unit as compared with 15.6c forecast in 2007. In the post-2026 period, the price settles at about 9.2c as compared with about 6.4c forecast in 2007. (For comparison, in wet years, the implied price at peak - 2022- would fall to 10.8c and the settled-down price to 5.6c).

1.4.1.6. In calculating the impact on retail tariffs, the first step would normally be to add in the capital repayment cost of the dedicated transmission connection, since this also would have to be included in the overall BST. In this case it appears (subject to confirmation by GOU) that the BIP is treated as a public sector project, its capital cost repayment to be borne by GOU and therefore excluded from the costs of Bujagali reflected in UETCL's Bulk Supply Tariff to the distribution companies. (A rough calculation suggests that assuming a 25 year capital repayment period, BIP would, if it were included in the BST, increase the implied Bujagali tariff by about 1c – more, if the capital repayment period were shorter)

1.4.1.7. A mark-up of about 5-6c/unit can be added to generation costs to equate to average end-user tariffs, to account for transmission, distribution, and all associated costs. Tariffs for different consumer groups vary quite widely, but on average it can be seen that Bujagali represents a retail tariff of about 18c at start-up, rising to about 24c at peak, then falling to about 15c during the later years..

1.4.1.8. In 2007, the impact of Bujagali on national retail tariffs was assessed by reference to the authoritative power sector forecasts then available from GOU, contained in Annex 12 to the PAD (though these were mainly limited to the years up to 2016). This was the basis for the claim in the PAD that Bujagali should exert downward pressure on average retail tariffs, so that a 10% reduction was possible. (WBIP however reported that this was optimistic and Bujagali could well exert upward pressure on tariffs). GOU have not provided updates of these forecasts, so that the analysis of tariff impact cannot be updated in the same way. However, some current evidence is available from the GOU National Development Plan (NDP) and the PSIP. What follows is based mainly on those documents.

1.4.1.9. The NDP paints a stark picture of the Ugandan energy sector, even compared to other developing nations. The current price to the consumer is stated to be 22c/unit (internationally, very high indeed); access to electricity is very low at 11%; power supplies are routinely and significantly disrupted; 92% of energy consumed is in biomass (wood burning) and only 1% in electricity. Only 6% of the rural population have access to grid power, compared to 40% of urban households. Losses (commercial and technical) are currently running at 40%. To remedy these problems, huge investment is required, multiplying current generating capacity by factors of 20 by 2020 and 100 by 2040, but the constraints listed (NDP, para 6.3.2) indicate the magnitude of the challenge in achieving anything like those targets, even with the heavy dependence on foreign assistance which the report postulates.

1.4.1.10. It appears that retail tariffs have increased significantly since 2007. At that time, the PAD indicated a current retail tariff of 17c, and forecast that this would fall in real terms over the following years, unless rising oil prices prevented this. One reason for the increase in 2010 is likely to be a combination of rising thermal power costs and concern about falling water levels in Lake Victoria, constraining hydro output. The PSIP however confirms that the thermal plants are partly Government-subsidised and will continue to be until their contracts have ended. Further, Table 6.14 shows continuing losses in the generation sector, well beyond 2020: "...the generation sector is in a loss situation mainly as a result of the huge investment required in new large hydro and geothermal plants". This compares with the assumption made in 2007 that subsidies would be phased out once Bujagali was commissioned.

1.4.1.11. So there has been a major change to the context, and expectations, against which Bujagali will be commissioned, as compared with 2007. Not only have tariff levels risen, but forecasts of both tariffs and subsidies have become more pessimistic – and more realistic, it should be said. PSIP states that there may be an opportunity to reduce prices and/or subsidies in the middle years of the present decade, but it is hard to reconcile this with investment needs, and the fact that Bujagali's introduction will only marginally reduce average generation costs.

1.4.1.12. Nevertheless, the thermal plants which were introduced to plug the gap resulting from the delays to Bujagali (Mark 1) are undoubtedly higher cost than Bujagali, so the replacement of thermal plant by Bujagali in the period 2012-16 (probably), during the peak years (possibly), and in later years (certainly), will <u>either</u> result in tariffs lower than they would otherwise have been, <u>and/or</u> a reduction in subsidies. However, it is important to note:

- This is not 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 (see para 3.4 above), selection of a least –cost option does not itself guarantee affordability.

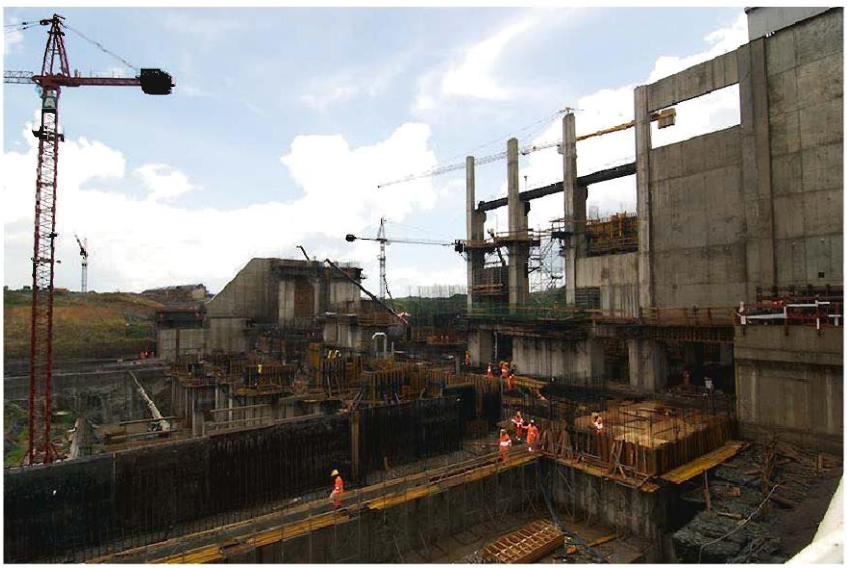
1.4.2. *Losses*

1.4.2.1. Upward pressure on tariffs/subsidies may be less than forecast by the NDP and PSIP, simply because the level of forecast investment may be unachievable. However, a countervailing risk arises from the forecast of loss reduction. In 2006 losses were about 45%, which the NDP suggests has reduced to 40%, but GOU continue to base their revenue forecasts on ambitious targets for further loss reduction. In 2007 losses were forecast to reduce to 25% in 7 years, but the NDP and PSIP appear to be setting even more ambitious targets. All international experience suggests that this is unrealistic, and is rendered more so by the effect of higher tariffs in increasing commercial losses (ie non-payment by customers). Setting an ambitious loss-reduction target for the power companies is laudable, but realistic forecasts of revenues should be much more cautious. The importance of this is clear: for a given volume of output from power stations in a given year, revenue will be only 75% of forecast if the losses are still at 40% as distinct from 20% forecast, thus producing a greater revenue gap to be filled by tariff increase or subsidies.



The Bujagali Hydroelectric project in progress

1.4.2.2. To illustrate this with reference to Bujagali, and using the 2007 figures: sector revenue for the year 2013 was forecast at $353m, on the assumption of a 25% loss rate (PAD Annex 12, Attachment 2). At a 40% loss rate, sector revenue falls to $282m, compared with the Bujagali revenue requirement in that year of $137m. So on that more conservative assumption, Bujagali absorbs nearly half total sector revenues in that year. Relatively, the 2010 picture is likely to be similar. Interestingly, in 2013 Bujagali is now forecast to supply 35% of the total Ugandan electricity output. (PSIP Table 4.9). This percentage only reduces with the forecast introduction of new plant in 2016-20.



The Bujagali Hydroelectric project in progress

1.4.3. *Affordability*

1.4.3.1. This point is relevant to affordability, in that Bujagali represents a big increment to generating capacity, whose costs are heavily front-end loaded, and which offers no flexibility in payment because of the contractually binding PPA and guarantees. The capacity charge may be capable of being met by customers, through the peak years, with tariffs at their present level, provided that demand growth continues at 5% plus p.a. as forecast and provided there is no increase in USh costs as a result of depreciation against the $.To illustrate this risk: a 10% annual depreciation would double the cost of Bujagali to Ugandan customers or Government in 7 years. Also, Bujagali is only narrowly intra-marginal: a small adverse change could produce upward pressure on tariffs.

1.4.3.2. A broader question affecting affordability is implied by the NDP, which comes close to saying that present conditions including prices at 22c/unit, are near to intolerable. Certainly there seems no prospect that the rural poor could pay such a price, so that for a continuing rural connection programme to be viable, either there must be a cross-subsidy from the urban customers, or an increase in GOU subsidies. Because it is only narrowly intra-marginal, the commissioning of Bujagali will not mitigate this problem; it could have the opposite effect if it pre-empts GOU funds which might otherwise have been devoted to rural electrification or the amelioration of poverty.

1.4.4. *Sustainability*

1.4.4.1. Sustainability of the project will be partly determined by continuing affordability, but an additional question arises from hydrology. Whilst it is true that Bujagali does not directly increase demand for water from Lake Victoria, its adoption in preference to other options does increase dependence on Lake Victoria and reduces diversity of supply. In international terms, the cost of electricity from Bujagali in a dry year is very high; moreover at 55% load factor, the power cannot be regarded as continuous baseload. If hydrological conditions worsen, and alternative sources of power are urgently required, Bujagali could appear as a white elephant, pre-empting funds. That would be the time to re-negotiate or buy-out, as provided in the PPA. However, the contractual terms governing this, effectively holding the investors and lenders harmless, are very onerous for the purchaser.

1.4.4.2. A further strategic risk arises from the foreign currency demands of the project. Its defenders say that it enables indigenous funds to be saved, as compared with a comparable public sector project, but the other side of the coin is that it requires the export of over $100m per annum for 25 years, rising to over $200m for a few years at peak. What is the long-term effect on the Ugandan economy of such a drain on dollar reserves?

1.4.4.3. The positive view is that, once past the debt repayment period, the annual cost drops very significantly and in the second half of its life the project should (setting aside currency and hydrology risks) offer affordable long-term power supplies at low technical risk and very low emissions.

1.5. **Concluding observations**

1.5.1. Conclusions on costs, tariffs, affordability and sustainability are summarised in Section 2. This section adds some general observations relevant to the approach to project appraisal, to safeguarding the future of the Bujagali project, to generation planning in Uganda, and to the financial structuring of similar projects in future

1.5.2. *Appraisal Retrospective*

1.5.2.1. Generally speaking, the EIB project appraisal in 2007 was comprehensive and thorough, correctly indentifying most of the project benefits and risks. However, some risks seem to have been under-estimated, most notably:

- Cost escalation, producing higher implied tariffs
- Affordability risk arising from possible currency depreciation against the dollar
- Risk that sector revenues were over-estimated because of ambitious loss-reduction assumptions

1.5.2.2. Had national tariffs remained at their 2007 level of 17c/unit, Bujagali would in practice have exerted significant upward pressure on tariffs and could have appeared unaffordable. Paradoxically, the delay in commissioning the plant (of several years, going back to Bujagali Mark 1) caused further tariff rises after 2007, which then meant that Bujagali, despite its cost increases, may have become narrowly intra-marginal in its tariff impact. Nevertheless, it is to Bank's credit that:

- its appraisal of likely tariff impact and affordability was more balanced and realistic than appears in the WB PAD
- it recognised the risk that the PPA guarantee might be called and the project could cause GOU payments as well as tariffs to rise, and consequently -
- it provided flexibility in the tenor of its loan repayment, thus allowing the opportunity for a small reduction in the capacity charge in the peak years.

1.5.2.3. Inevitably the EIB in appraising projects will be likely to rely to some extent on the work of others. Two lessons might nevertheless be learned from the Bujagali experience:

- for major infrastructure projects, the desired strategic benefits for the country need to be assessed as rigorously as the prospects for financial return on the investment, recognising that the 2 may sometimes be in conflict;
- for long-term projects, offtake contracts (in this case the PPA) are important instruments of risk allocation and management. Project appraisal needs to incorporate a properly informed review of the contracts – preferably at a stage where change is still possible.

1.5.2.4. These are tentative suggestions only. But buy-out could in adverse circumstances be highly desirable, giving GOU the opportunity to smooth tariff effects, preserve affordability and prevent collapse of the project. There may be advantage in re-considering the terms now, before the circumstances arise.

1.6. **Rural Poverty and Diversification**

1.6.1.1. 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 meet future demand growth decades ahead, without increasing pollution or use of Nile water. However, strategic criticisms of the project, made over the years, also appear now to have gained in weight:

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

1.6.1.2. It is therefore encouraging to read, in the GOU report "The Renewable Energy Policy for Uganda" (REP) of November 2007, that "Government is promoting the decentralized (distributed) off-grid electricity supply model for remote areas" Whilst the economic stimulus for business provided by large grid-based projects such as Bujagali is recognised, it will take years, perhaps decades, before the "trickle-down" effect will start to benefit the rural poor, and it seems essential that there should be a parallel drive to bring affordable electricity to rural areas, not only through grid extension and connection but also through distributed generation. Such projects will also diversify electricity supplies, and reduce dependence on foreign resources. There should (with national tariffs at 22c) be plenty of scope for development of intramarginal supplies of this type. It is to be hoped that EIB and other IFAs will encourage and support this strand of Government policy.

1.6.2. *Financial Structures*

1.6.2.1. Another issue, raised in the WBIP Report, is whether the Bujagali financial model and structure should be repeated for the next big hydro project, Karuma. The problem with IPP development in Uganda is the high degree of perceived country risk. This means that prospective private developers and lenders will seek full security against all project risks, and a high rate of return/interest, strongly front-end loaded, denominated in hard currency. The Bujagali PPA and guarantees appear in some respects an extreme example of this structure. If it is true that IPPs are queueing up to invest in Uganda (see the NDP), this might suggest the process has gone too far, at the expense of GOU and customers.

1.6.2.2. Again, it is encouraging to read in the REP that a "Standardized Power Purchase Agreement and Feed-in Tariff" is being established, and that "Public Private Partnerships will be encouraged and the tariffs will be negotiated on a case-by-case basis". This presumably means that, unlike for Bujagali, capacity charges, ie tariffs, will be fixed for new IPPs **in advance of contract signature**; and that different models for risk- and reward- sharing between the public and private sectors will be explored.

2. COMMUNITY AND RESETTLEMENT ISSUES

2.1. Background

2.1.1. The complainants alleged EIB failure to guarantee fair and adequate compensation to affected communities. They further argue that the resettlement of displaced people in the Naminya resettlement area was not done in accordance with EIB policies and conditions agreed upon by AES and/or BEL.

2.1.2. On the basis of a fact finding mission dated April 2009, the complainants took the view that the people affected by the project were not compensated in a fair and adequate way, in violation of the Bank's most basic policies according to the complainants. 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.

2.1.3. 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. The full SEA is available on the BHP website.http://bujagali-energy.com/bujagali_hydroDocuments.html

2.1.4. 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 Borrowerand the stakeholders (e.g. livestock and poultry farming). However, 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.



EIB visit to Naminya, resettled people

2.1.5. Whilst the numerous issues of non-compliance to WB policies and procedures were found by the IP and the management response and action plans attempt to rectify some of these issues, the present Chapter concentrates in providing the detailed findings of the EIB-CMinvestigation, in terms of concrete implementation issues raised by the complainants on the ground.

2.1.6. 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*".

2.1.7. The BHP is such a co-financed project in 2006, 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.

2.1.8. In view of the fact that the EIB services legitimately relied on the work performed by the WB and IFC the EIB-CMnotes that some of the detailed compliance issues raised in the IPR might also have affected the compliance of the EIB. Notwithstanding and resulting from "Mutual Reliance" initiatives and relying of works performed by co-lenders there seems to be room for further exploring the actual responsibilities of the EIB within this concept

2.2. The Community Development Action Plan

2.2.1. The Community Development Action Plan (CDAP) prepared by AES in 2000 and 2001 was disclosed to the public together with the Environmental Impact Statement in February 2001. The CDAP included the following components:

- Vocational training to enhance employability of local residents, including Project-Affected People
- Development of a commercial area next to the Project's main construction site, to make it possible for local women to sell food and other goods to Project workers
- Water supply to 8 communities in the Project-Affected Area
- Extensions to the electricity low tension network into village trade centers in the Project-Affected Area from an existing line
- Construction of new landing sites for fishermen, technical assistance and provision of fishing gear
- Business creation training and technical assistance, and micro-credit
- Upgrades to 5 existing primary, secondary and vocational schools
- Tourism (construction of a visitor center at the dam and construction of a cultural centre)
- Upgrades to existing community health centers at Budondo and Naminya
- Community resource centers established in existing buildings, intended to provide services such as small business support, libraries, training and meeting rooms, etc...



Visit of new health clinic

2.2.2. Before withdrawing from the Project in 2003, AES had undertaken some of the CDAP committed upon in the publicly-disclosed RCDAP, mainly the following:

- Upgrades and/or expansions of some primary schools, particularly the one in Kyabirwa (East Bank)
- Drilling of 8 boreholes fitted with "Orbit" handpumps in the Project-Affected Communities (plusone in the Naminya resettlement site)
- Limited upgrades at the existing Budondo health centre and establishment of the Naminya health centre in the "model house" at the Naminya resettlement site

2.2.3. However, other activities anticipated under the CDAP were not implemented, such as:

- Construction of an additional classroom block at the Naminya R/C primary school
- Electricity supply, although detailed design was indeed undertaken
- Support to the development of tourism activities
- Support to fisheries
- Micro-credit
- "Community resource centres"

2.2.4. When taking over of the project, BEL decided to develop and build on an "Assessment of Past Resettlement Activities and Action Plan" (APRAP) instead of creating a new Resettlement Action Plan (RAP) from scratch. The justification being that PAPs had already been relocated or had received compensation under the previous project. According to the CDAP, extensive socio-economic surveys were carried out by WS Atkins as part of the EIA in 1998, and by AES in 2000 prior to the RAP implementation.

2.2.5. The IP in their report in section VII, Involuntary Resettlement, concluded that the assessment did not include an evaluation of the impact of the delay on the socio-economic conditions nor an assessment regarding the compliance with WB policies. Furthermore the IP concludes that they could not find an adequate socio-economic survey which characterises the socio-economic conditions and livelihoods of the people living in the eight affected communities and that they were not appropriately dealt with due to the lack of adequate baseline assessments.

2.3. Implementation issues

2.3.1. *Housing*

2.3.1.1. When the EIB-CMvisited Naminya I February 2010, PAPs informed them that indeed the original houses were rather poor, albeit better than their houses before resettlement. However, they recognised that BEL had continued to improve their housing conditions and that they were all content about this issue.



Water tanks in Naminya

2.3.2. *Water and electricity*

2.3.2.1. In line with allegations put forward, the EIB-CMfound that PAPs in Naminya village still have no electricity and no running water and that all households have 1 water tank.

2.3.2.2. However, at the time of the EIB-CMvisits, BEL provided 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 Shs 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).

2.3.2.3. As per end December 2010, about 65 % of 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 complete. Over 50 public yard taps are under construction, and the booster station and reservoir to serve Naminya were under construction as well. BEL expects that the program will be completed before the end of 2011

2.3.2.4. The electricity part is more complicated as the funding and budget is not only dependent on BEL but also on REA. BEL informed the EIB-CMthat despite all the earlier discussions and despite follow-up calls and communications between the REA and Agence Française de Développement (AFD), REA was slow on the uptake and had not yet responded to their April requests on their level of participation with the electrification. AFD and BEL met with REA in early September. In this meeting REA advised them that they need to first provide them with a detailed engineering proposal before they can present that request to their board in order to determine their possible participate. This is a different scenario of what was envisioned a few years ago. BEL is currently undertaking this engineering work and is approaching it from two directions. One being that BEL will solicit REA supplemental funding and the second is 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.

2.3.2.5. 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 of operation and maintenance of the schemes, and (iv) power users would pay the connection fees. REA has agreed to examine the requested budget and get it approved by its Board at latest end of June 2011. Upon signature of a MoU with REA, BEL could then launch the works by 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.

2.3.3. *School*

2.3.3.1. The primary school building was almost completed in February 2010, and it has been completed since. 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.

2.3.3.2. According to BEL the upgrading of the existing school facility with a new building is what was agreed. The new building including around 50 desks were near completion when visited by the EIB-CMin February 2010. After having finished the building it will be handed over to the GoU. BEL is not running the school and as such cannot nor should not substitute the GoU. The responsibility for the daily running of the school, including provision of teachers and materials lies therefore with the GoU.

2.3.3.3. The 10 classroom block constructed by BEL is not occupied yet in September 2010 awaiting blessings from the Bishop. This is expected to take place during the month of October. The landscaping was completed and the compound is maintained by the school.**According to the last quarterly report from BEL over 2010, this has now happened and the classrooms are being fully used.**

2.3.3.4. Late summer the landscaping of the nursery school compound and installation of play equipment was completed. The school is attended by 188 pupils.




Inside the Primary School

2.3.4. *Income*

2.3.4.1. Prior to the resettlement some of the families drew their entire or partial income from fishing. Due to the resettlement the some people lost their main source of both food and income. The complainants allege that AES promised to build a fish pond, but that BEL refused to do so. Furthermore the complainants write that instead of fishing some PAPs grow beans and vegetables but that this, given the size of their land, is mostly for own consumption and that the market place that was promised has still not been build so that they do not have a place to sell them in case they have sufficient produce.





Resettled people provided with livestock and plant nursery

2.3.4.2. According the approved EIA the CDAP prepared by AES covered the construction of new landing sites for fishermen, technical assistance and provision of fishing gear. The support to fisheries was also listed as one of the items having been undertaken by AES. Section 5.3.3 of the CDAP deals in detail with "fisheries". According to the APRAP: the Fishery component comprises of monitoring and training on the one hand, provision of equipment and infrastructure on the other; both these sub-components are designed and implemented in close consultation with existing fishers' associations of both banks and the Ugandan relevant institutions of training and research in the field of fisheries; monitoring and training will aim at help fishers deal with modified river conditions when the reservoir is impounded, while the provision of infrastructure and equipment will include nets and boats, together with the construction of landing sites (jetty + accessible marketing area).

2.3.5. *Fish Ponds*

2.3.5.1. The EIB-CMwas not able to find any mention of fish ponds in any of the BHP project relevant documentation. Notwithstanding and the fact that the resettled people of Naminya are too far removed from the Nile river to go fishing daily BEL recognised this and did take on this issue after the EIB-CMvisit and concluded with a local NGO named SOUL a Memorandum of Understanding. 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 were stocked the first fingerlings in early September 2010. 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 will also be looking at a program that will help train the people from Naminya to work with other communities for similar ponds.

2.3.6. *Small business support*

2.3.6.1. This training of PAPs is also part of the CDAP, in particular that according to the CDAP and subject to consultation with interested stakeholders, BEL hasimplemented a small business support and microcredit program in the Construction phase of the CDAP.

This program includes the following three components:

a) Establishment of a basic business support centre on each of the banks, with the following services:

- Training in business planning and business management, with focus on fisheries, petty trade and agricultural businesses;
- Support services (assistance in setting up businesses, telecommunication and secretarial services);

b) Micro-credit;
c) Linkage with BEL and EPC contractor supply chain departments, and support to local businesses being outsourced construction or operation services by BEL or its contractors.

2.3.6.2. According to BEL a total of USh 176,670,000 (one hundred seventy six millions six hundred and seventy thousand shillings) has been disbursed to 297 PAPs so far. The highest number of beneficiaries of the micro credit scheme are in Namizi west and Kyabirwa villages.

2.3.6.3. During the 2nd quarter of 2010,BEL went into partnership with Uganda Finance Trust and the institution was given USh 212,000,000 to loan on to the PAPs. By the end of 2010, USh 238,470,000 was disbursed in the project affected villages to 384 PAPs, with USh 26,470,000 as the amount that had revolved by Q4 2010.

2.3.6.4. 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 operational early 2011.

2.3.6.5. PAPs/beneficiaries were first informed about the program before the Finance Trust was brought on board and and explained the details of how the fund was to operate. After selection of UFT, meetings were held in each village to introduce UFT and they in turn explained what it takes to borrow, therefore the concept of "free" "no strings attached" money was excluded.

2.3.7. *Market place*

2.3.7.1. When visiting the site in February the EIB-CMwas shown, at Malindi, an area earmarked for the creation of the market place. There was neither a sign indicating the proposed function of this piece of land nor any indication of timing for opening. Since BEL contracted a construction company for the physical creation of the market place – the EIB-CMwitnessed its progress in June 2010 - and it should be ready for dedication very soon with the last items of some road work and the latrine structure nearly completed.

2.3.7.2. The EIB-CMwas provided with a copy of the MoU between BEL, Wakisi Sub-county Local Council, Property Consultants Limited, Mr Sevume and Mr. Bukenya 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 PAP). The land will be transferred to the sub-county once the land title processing is finalised, and the market structures will be handed over to the sub-county after the construction.

2.3.7.3. Construction of a market for the community is an undertaking under the Community Development Action Plan. This plan details activities aimed at benefiting the wider community within the project affected villages; including, but exclusively PAPs. The Activities that specifically targets PAPs are detailed in another plan; which does not have market construction as one of the activities.

2.3.7.4. The EIB-CMwas provided with a copy of the MoU between BEL, Wakisi Sub-county Local Council, Property Consultants Limited, Mr Sevume and Mr. Bukenya 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 PAP). The market was handed over to the project affected persons through the Wakisi and Budondo Sub county local governments during the month of December 2010. An MoU 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.

2.3.8. *Land tittles*

2.3.8.1. During the visit to Naminya, the EIB-CMwas informed by the PAPs of persistent problems in the assignation of land titles to some resettled people (in particular, three persons directly addressed this concern to the CO).

2.3.8.2. The last situation, according to BEL, is that over 90 tittles 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 constantly with the responsible authorities.

2.3.9. *Local council*

2.3.9.1. Regardless of the claimed promise by AES the EIB-CMdid not find in the EIA documentation any evidence of a promise regarding the Naminya PAPs having their own local council. The resettled people were included in the already existing local council and like all others have the possibility to stand for elections and office, which some of them did and now have are part of the local council function. The EIB-CMdid not find any evidence supporting the claim of the complainants that PAPs feel segregated or that they are being marginalised by such council. In fact the other people of the district are pleased as they have had more facilities due to the resettlement than before, such as improved schooling and health facilities. The issue regarding not being able to obtain local authorities signatures necessary for getting a job on the construction site, not the issue of actually getting jobs there was raised by the PAPs during the EIB-CMvisits.

2.3.9.2. The councillors representing the various project affected parishes at the sub-county level are elected by all eligible voters in those parishes including PAPs. It is therefore incorrect that PAPs do not vote for their representatives at the sub-county level. PAPs are part of the communities they live in and are served and represented like any other community members.

2.4. General resettlement conditions

2.4.1. During the visit to the resettled people in Naminya, the EIB-CMposed them a question: do you feel that you are better of before or after the resettlement? All people replied that they were doing better now than before and that the quality of their lives had improved. Some of the issues that were discussed that were part of any discontent such as the market place, water supply and fish ponds should no longer be an issue as these are being addressed. The PAPs were happy with the nursery and the additional building for the primary school. There does seem to be, despite proof of regular contact between the PAPs and BEL, a lack of communication and understanding. In particular in Naminya the EIB-CMnoted that some of the demands - such as a market place in Naminya itself, where there is not likely to be enough people for any retail activity; wanting to been given the land and empty houses of PAPs who ultimately had decided not to move to Naminya – are somewhat unrealistic.

2.4.2. Within the context of providing income BEL takes the view that any activity that they support should be sustainable in the long term. This is also the main reason behind their work to provide those who are willing, committed and capable and have appropriate structures (sheds) with chickens. Such families have been provided with 100 chickens and quality foods. BEL explained to them how to keep the chickens and the importance of caring well for them. For most of the families provided with these chickens this seems to work well. One person who started giving the chickens low quality food and saw the production of eggs and the state of the chickens deteriorate decided that he wanted to sell them. BEL bought the chickens from him and informed the person that together they will work out a new business so that the proceeds can be used to start up. In the EIB-CMopinion this is the correct way to treat these issues as it falls within the CDAP item of providing basic business support.

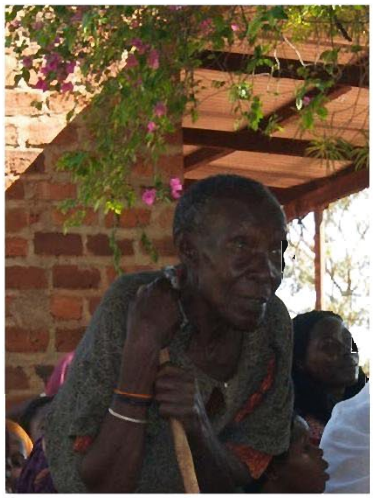
2.4.3. There was some misunderstanding and perhaps bad communication regarding the micro-credit facility that the PAPs were offered between February and June 2010. Apparently the concept of micro-financing was not clearly explained to the PAPs at the beginning and it seemed that they were of the impression that this meant “free” and “no-strings attached” money. The micro-financing facility selected by BEL, Uganda Finance Trust, together with BEL, should endeavour to clearly explain the micro-credit concept to all PAPs. From the quarterly reporting from BEL this seems to have happened since and now some xxx of loans have been granted and paid out.

2.5. BEL Newsletter

2.5.1. BEL issues on their website www.bujagali-energy.com quarterly newsletters. These rather comprehensive newsletters show BEL's commitment and highlight progress on the Social, Community Liaison, Environment interventions and activities and are also available in Luganda and Lusoga.

2.5.2. According to the BEL website they may issue future notices in the New Vision, Daily Monitor, and Bukedde newspapers as well as announcements on local radio stations.









Women affected in Malindi village

3. COMPENSATION OF T-LINE AFFECTED PEOPLE

3.1. Background information

3.1.1. This part of the complaint relates to the compensation issues concerning the transmission line project (BIP). The complainants highlighted, amongst other issues, the *'failure to guarantee fair and adequate compensation'* to communities affected by the BIP. The complainants also highlighted the fact that, as a consequence of these failures, *'557 people decided to file a complaint in court (class action) against UETCL, on the basis of the Constitution and the Land Act which provide for fair and adequate compensation.'*

3.1.2. The Bujagali Interconnection Project (BIP or T-line) is financed by the AfDB and not by the EIB. However, the T-line is an associated project to the BHP. Consequently the EIB-CMdecided to accept to include the allegations made by the complainants regarding compensation issues concerning the T-line in their review. The EIB-CMdid deem 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. For detailed information please refer to section XXX. In this context, the EIB-CMhas performed an assessment of the valuation and compensation process and evaluation of the compensation paid.

3.1.3. This issue was already part of the complaint lodged with the AfDB IRM. The AfDB IRM conducted their Compliance Review in 2008 and held subsequently 2 monitoring missions, one in May 2009 and another one in May-June 2010. The EIB CM has worked in close cooperation with the AfDB IRM, in the context of the present investigation and the second CM visit took place at the same time as the IRM second monitoring mission.

3.1.4. There is a 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 project affected people (PAP) was calculated, and whether the company used rates set by the Mukono District.

3.2. Position by UECTL

3.2.1. *Background*

During the development of Bujagali I by AES Nile power, several milestones had been attained. This included acquisition of the dam site and finalization of the RAP studies for the Transmission line component. By 2002, The RAP for the dam site had been implemented and preparations for Implementation of the T-Line RAP were in advanced stages. However, due to financial reasons, AES pulled out of the project, handing over its development to the Government of Uganda.

The Government of Uganda committed to the development of the project and proceeded to solicit funds to accomplish the project. In the meantime, a small unit of 13 persons was retained to oversee the transition from AES to a new developer and implement the pending T-Line RAP. For this purpose, an implementing unit was set up and mandated in 2004 to update the RAP information for the transmission line component and embark on its implementation.

Between 2004 and 2005, consultations with the PAPs along the proposed line were held with the following objectives:

1. To update the PAPs on new developments from the time AES handed over the project.
2. To ascertain the developments on ground since AES departure
3. To capture any matters arising from the PAPs.

Following the first round of consultations, it emerged that a lot of developments had taken place since the survey and valuation exercise conducted in 2000/2001. A comprehensive plot by plot verification was thus conducted from Naminya to Mutundwe, recording all developments in the corridor.

The West Bank had land subdivisions and structure developments as well as general price escalations while Mabira to Wakisi side had farms abandoned due the general price falls of crops like vanilla and coffee as well as pronouncements by AES stopping the cultivation of crops. It was thus difficult to go by the 2001 report. It was then recommended that a fresh survey and valuation exercise be conducted.

The findings were communicated and discussed with the PAPs in consultative committees that were documented. Notably; while the Mukono-Kampala side welcomed the revaluation, Wakisi area rejected the revaluation, preferring to go by the 2001 data. After a series of meetings, it was agreed to resurvey and re-value property.

In May 2006, a new valuation exercise was commissioned with adjustments in the route in areas between Mutundwe and Kawanda[11]. The rest of the route remained intact. A two pronged approach was used, with one team moving from Naminya towards Kampala and another moving from Mutundwe towards Jinja. This was adopted to clear the problem areas fast enough and handle Mukono area last.

3.2.2. *Developments in 2006-2007*

a) During field work;

Whereas it was agreed in the consultative meetings in Wakisi to discourage speculation and excessive land subdivisions, the reality on ground was appalling. The L.C chairpersons were the same people witnessing agreements of sale and encouraging massive land transactions and overnight planting of high value crops within the corridor. The problem and recommendations were highlighted in an October report prepared by team and submitted to MD UETCL, PS MEMD, RDC of Mukono and the lenders.
Meetings were held with various policy makers to discuss the strategy and subsequently a directive was written by the Permanent Secretary of Ministry of Energy warning and stopping speculative investments within the corridor. Further meetings with PAPs were held to highlight the problem and as expected turned violent and dangerous to the team.
In a meeting with BEL and UETCL, the consultant and Witness NGO, it was resolved that in order NOT to stall work, the consultant should assess everything on ground and put additional notes as "just planted/newly planted, just built" for further treatment. Additionally, photographic documentation was to be made to supplement the notes.

b) Valuation and Approval of Report

During this period, Communication was made to the CAOs of Mukono, Wakiso and the Town Clerk of Kampala to ensure that compensation rates were updated. Specifically, Mukono's rates turned out to be so exorbitant and warranted UETCL to seek opinion of the Chief Government Valuer (CGV) who summoned Mukono district land officials for a meeting to rationalize the rates. Revised rates were then issued in November 2007. However, some Councilors[12] originating from Wakisi had obtained copies of the exorbitant rates and had circulated amongst the Wakisi PAPs.
In addition, the crop and PAP count turned out to be extremely high within the corridor compared to the crop count sampled outside the corridor. An example is a 4x4 meter plot with lots of high value crops within the corridor as opposed to only bush outside the corridor. Based on these issues, the following actions were taken by the CGV:

1. All crops described as young would not be compensated for
2. All speculative structures were to be valued as such but were not eligible for in kind consideration (reference to approved RCDAP principles). This was supplemented by further verification of residential structures which found most of them having collapsed or ruined just after 2 weeks.
3. For extreme cases of speculation, a rationalization formulae would be applied; this was referred to as the "Max Cap principle"[13]
4. The actions must be communicated to PAPs for transparency purposes.

[11] Re-alignment was as a result of heavy settlements built between 2002 and 2005.
[12] The same Councilors had speculative plots in Malindi Parish
[13] Refers to the maximum number of crops that can be accommodated on an acre of land with proper crop husbandry. In Wakisi's case a linear acre had very many interests corresponding with the very many crops

Meetings were organized with the relevant sub county consultative committees and villages affected by the decision. The villages in question are Naminya, Buloba, Malindi, Kikubamutwe, Wabikokoma, Wabiyinja, Lukaga, Kito Masiko and Wagala[14]. Proceedings were recorded and even though violent, agreement was reached to implement the actions. In addition, group disclosures at district, sub county and village level expressly stated the fact that speculative crops and structures were not eligible for compensation or replacement in kind[15].

3.2.3. *RAP Implementation; May 2008*

Individual disclosures were then embarked on, beginning with Wakisi which was highlighted as the problem area. Agreements from PAPs were obtained together with valuation disputes that were subjected to the grievance resolution mechanism. It was towards completion of agreements and payments that UETCL received notification that a group of 557 PAPs from Wakisi were intending to sue UETCL for failure to compensate them. Incidentally, these were the known speculators who had agreed to compensation and had received their money.

3.2.4. *Status of Compensation for the 557*

It is noted that the list of the 557 submitted contains several sections, among them are people who have been indicated as having had residential structures and were not compensated, others are indicated under the title of "Persons with Titles" but the designations as tenants. It is not clear what the claim for such is since those with genuine residences, replacement houses were offered and accepted. Nevertheless, the attached sheets summarize the status of compensation and are specific to the 557 cases.

3.2.5. *Critical issues to consider in this case*

With the current developments, it is highly important that the Government and the Development partners think of consequences of decisions that may appear to encourage, condone or foster acts of exploitation of project developers and set precedents for future projects. Thus;

1. Influx of persons in designated project areas for purposes of tapping compensation must be discouraged by all means because this grossly raises the number of project affected persons, a key parameter in appraising projects. The lenders have a cut -off date as outlined in O.P 4.12
2. The government should rely on its laws and regulations regarding certain activities; In this case, the Town and country planning Act has limits of sizes of plots acceptable for survey purposes. The Wakisi plots are well beyond any reasonable plot for surveys. The fact that the project developer went a step further to compensate for reasonable subsistence developments on them should not be abused.
3. The petition must be looked at from the angle of origin. In this case, the PAPs had access to the disputes resolution mechanisms and the cases presented were resolved. However, an external party fueling such a claim should be clear of their interests. To this end, the development partners should assess the merits and demerits of the case.
4. In case of condonement of such acts through a decision in favour of the culprits, the actions will set precedents on any other future infrastructure projects in the country.

According to UECTL the status of the compensation process at 30 April 2010 is as follows:

Totals at 30 April 2010	Number	Percentage of Total
Total Transactions	2674	100 percent
Total Disclosures	2425	91 percent
Total Agreement	2374	89 percent
Disputes	51	2 percent
Total Payments Made	2272	85 percent

[14] Speculators had crossed to Masiko, Kito and Wagala and had subdivided the plots and inserted crops/props.
[15] Refer to June 2007 report on disclosures, including translated material

3.3. **The Compensation Strategy**

3.3.1. *Background*

The environmental consultancy, Burnside, in December 2006 drafted a Social and Environmental Assessment (SEA) report based on consultations it had undertaken in the villages and communities which would be affected by the BIP and the BHP. In the report's summary of key issues communicated by the local communities, the following was stated in relation to the issue of compensation: *'The key concern relating to the BIP process is the land/asset valuations process and what people can expect (and when) to receive compensation.'* At the same time, UETCL, in conjunction with Burnside, drafted a Resettlement and Community Action Development Plan (RCDAP) which outlines the framework governing the compensation and resettlement strategy.

3.3.2. *Key Principles governing Compensation Strategy*

The RCDAP makes it clear that that the principles governing the resettlement and compensation for PAP will be in compliance with Ugandan legislation based on the provisions of the IFC's Performance Standard 5, which relates to 'Land Acquisition and Involuntary Resettlement.'

The RCDAP states that the key principles under PS5 that are relevant to the compensation strategy for the BIP are as follows:

- To avoid or at least minimize involuntary resettlement wherever feasible by exploring alternative project designs,
- To mitigate adverse social and economic impacts from land acquisition or restrictions on affected persons' use of land by: (i) providing compensation for loss of assets at replacement cost; and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected,
- To improve or at least restore the livelihoods and standards of living of displaced persons,
- To improve living conditions among displaced persons through provision of adequate housing with security of tenure at resettlement sites.

The RCDAP document makes explicit reference to the following laws which have relevance to land tenure, compensation and resettlement:

- The Constitution of the Republic of Uganda, 1995
- The Land Act, 1998
- The Land Acquisition Act, 1965
- The Electricity Act, 1999

The 1995 Constitution, which restored all private land tenure regimes in Uganda, also created 'for the government and for local authorities a statutory power of compulsory acquisition of land in the public interest and make provision, inter alia, for the "prompt payment of fair and adequate compensation" prior to taking of possession of the property.'[16]

Please see § 5.8 for issues of the legal principles underpinning land compensation and regulatory framework in Uganda.

3.3.3. *Mechanism for Calculating Compensation*

The RCDAP states that the mechanism used for calculating compensation payments for PAPs is based on the domestic mechanisms, outlined as follows: *'Valuation and compensation are in accordance with rates set at district level for crops and "non-permanent structures." Rates are established and updated at District level, and are enacted by District Land Boards. Permanent structures are valuated on a case-by-case basis.'*

[16] RCDAP, December 2006, page 41

According to the RCDAP document, the compensation mechanism is based on the Land Act of 1998. This suggests that land and building are to be valued at the market rate, whilst plants and crops are to be valued at rates established at the district level by the district land board. The RCDAP document states the following:

- The value for customary land is the open market value of the unimproved land;
- The value of buildings on the land is taken at open market value for urban areas, and depreciated replacement cost for rural areas;
- The value of standing crops on the land is determined in accordance with the district compensation rates established by the respective District Land Board. Annual crops which could be harvested during the period of notice to vacate given to the landowner/ occupier of the land are normally excluded in determining the total compensation;
- In addition to the total compensation assessed, there is a disturbance allowance paid of fifteen percent or, if less than six months' notice to give up vacant possession is given, thirty per cent of the total sum assessed.

However, as the RCDAP states, in many cases the World Bank Group ("WBG") requirements in terms of compensation for PAPs, are more stringent than that required under domestic legislation. As a consequence the RCDAP explicitly states the following in relation to UETCL's commitments: *'UETCL is committed to fulfil WBG requirements. Appropriate compensation approaches are therefore needed, with a first part of compensation meeting Ugandan law requirements, and an additional uplift from UETCL where needed to comply with WBG requirements, that is if these requirements are not met by the Ugandan provisions.'*

In relation to the overall mechanism and process for approving payments, the mechanism to approve that valuation and methodology used for calculating land compensation values is in compliance with the laws of Uganda" is understood to be highly complex. The process started by identifying the PAPs along the Transmission Line Corridor. Their details were profiled and photos were taken. Survey exercises to value the land, economic activities, crops, children, houses/structures, animals, trees among others commenced. The Village Local Council (LC1) verified the PAPs, The Parish Land Chairperson assessed and verified the land and property. But the District Land Valuer was responsible to value the land and property, an exercise he undertook in conjunction with independent / private land surveyors.

As emphasised above (§ 4), in theory valuation rates for compensation purposes should be drawn up at the local level in order to take into account particular market characteristics. However, in practice it is rare at any administrative level below district level for there to be a trained valuer, meaning that private surveyors are often used for land valuation. According to the 'Witness NGO' on the BIP project, independent private surveyors were used for land valuations across the length of the transmission line on the BIP for assessing the market value of land and property.

After the valuation exercise has taken place, the District Land Valuer will submit a report to the Central Government Valuer ("CGV") who has executive authority to sign off on valuations. As stated before, there can be a bottleneck at this stage in the process leading to significant delays between valuations and the disclosure of payments to PAPs.

Once the CGV has signed off on the compensation amount it will be disclosed to the PAP, who has the authority to either accept or reject the compensation value. Then, he and his staff attended these disclosure meetings with the individual PAPs in order to witness the process. In the event that PAP agrees to the compensation payment being offered, UETCL provides the funds, which are held at the Ministry of Finance, Planning and Economic Development.

3.3.4. *Progress of Compensation Payments*

The Monitor, in an article dated 19 August 2007 commented in relation to the community consultation process: *'Comprehensive consultations, monitored by experts from seven international financing institutions, were disclosed to the public in December 2006. Comprehensive consultations, monitored by independent NGOs, were held with local community members and national stakeholders, to identify compensation measures. The local community and other affected people are supportive of the project. Compensation for land taken and resettlement of 5,158 persons compare favourably with similar projects worldwide.'*

According to the Witness NGO, there were several phases to the consultation process, which took place throughout 2007, meaning that the valuation process did not start until 2008. This corresponds with a '*special announcement'* posted in *New Vision* newspaper on 9 June 2008. This announcement communicated to all persons affected by BIP that, '*preparations to compensate and resettle the affected persons are underway'*. The announcement stated: '*The exercise will commence in Wakiso Sub-County, Mukono district and will then move on to other places as will be designated. All those affected by the project are kindly advised to check with the local council one (L.C.1) chairpersons of their respective villages for more information'*.

The compensation process seems to be currently near completion. Less than five per cent of cases are still pending. Cases that have not yet been compensated fall into various categories. There are those who were compensated and they feel they don't want that money because they think it is very little. There are others who have not been compensated simply because there is a process which requires, for example, legal issues to be addressed such as when an entitled person dies before he/she is compensated. Until the legal estate administrator is found that process continues. Others are minors and they cannot get compensation until the court has cleared them. While others have rejected the valuations of their property because they think that they are undervalued

It seems that issue of who held title to land had been the key problem delaying the process and the principal reason for why the process was not yet complete: Some PAPs claims to own a piece of land by the land title was not transferred to him/her by his/her deceased family member. These claimants have failed to update their land titles and this makes it a bit hard for them prove whether or not they are the rightful owners of land. The issues of rightful ownership are a problem.

3.4. **Disputes and Complaints**

3.4.1. *Media Coverage of Compensation Issues*

Media coverage has largely focused on complaints from residents in the project affected villages. Notably, a large number of the articles in relation to compensation issues around the BIP included interviews with the same PAP.

On 12 March 2009, the Ugandan newspaper*, The Observer*, commented that '*about 2,682 households live along the area earmarked for the new power lines. Most of these people say they are not ready to relocate unless the government adequately paid them.*' The article quoted one of the PAPs, Yusuf Aslimwe ("Aslimwe") warning of legal action stating '*for us, we are still waiting. They haven't compensated us. And in case they try to tamper with our property—they should know that the matter is before our lawyer.*' Aslimwe also reportedly accused UETCL of delaying the compensating claimants as *'a ploy to force locals to accept less than the value of their property.'*

An article in *The Monitor*, dated 17 October 2008, said that according to the assessment forms that they had seen, '*the compensation rates for a plot comprising of a house ranges from* [USh] *30,000 to* [USh] *9 million*.' Yusuf Asimire, described as the leader of the Nansana-Nabweru affected communities was also quoted in relation to the compensation values commenting *'This is unacceptable. We shall protest in courts as well as strike against the project.'*. Mr Asimire said the company had also failed to give the residents "disturbance allowance"

Yusuf Asimiire, was also quoted in *The Independent*, dated 29 October 2008, which referred to the speed at which the project was being implemented: *In 2006, he bought a plot of land in Nansana, on the outskirts of Kampala and built a seven-roomed house. After years of unimaginable sacrifice, a long held dream had come true. 'I was happy at last,' he said. But the dream may quickly disappear into oblivion. Uganda Electricity Transmission Company (UETCL) wants them off the land by January 2009. Construction of the grid poles will begin by February 1, 2009. Though he had heard about it, Asiimire never knew that it would be that soon.*

3.4.2. *Allegations of Systematic Underpayment*

In the course of its enquiries, the EIB-CMhas encountered several complaints from PAPs suggesting that their land, property and plants had been undervalued.

Similar views were expressed by several residents of the project affected villages approached in the course of the investigation. One individual who said that he owns several plots of land, registered in the name of his children, in Kito village, made a similar complaint suggesting that each of his children had been offered significantly below the market rate. For instance he claimed that "*my first child signed a form worth USh 21 million but to our surprise at the time of payment they brought a different form worth USh 2.1 million even though the plot included a house.*" A resident of Malindi Village said that "*at my wife's first valuation the plot was worth USh 1.59 million but upon payment they presented a form worth USh 170,000 as the value for both the plot and the crops.*"

A resident of Buloba Village who identified herself as one of the claimants in the on-going court case said the following: *"I had over ten farms but the money paid to me was less than USh 800,000. For instance a plot is Shs2 million or more but what was being could not buy another plot."* Another PAP made a similar allegation of systematic underpayment, highlighting a recent out of court settlement agreed by UETCL and five PAPs (see below). The out of court settlement, agreed with four of the five PAPS, compensated them by three to four times the original agreed amounts.

3.4.3. *Speculation*

According to the project Promoter, speculation is one of the biggest challenges facing the project. This allegation corresponded with comments made by other sources with close involvement in the project. UETCL claims that the consultation process which took place ten years ago when AES was the project sponsor had led to an increased awareness of compensation possibilities and an unfeasible increase in the number of PAPs: *"The methodology we used for calculating the compensation are internationally recognised even by the funders of this project like the World Bank, the African Development Bank and the European Investment Bank. There is no way these people* [who he described as opportunists] *would have given their money if they thought the process is flawed. In 2000, we had 297 genuine claimants for Bujagali I and today we have 2,700 most of these are people who have been assembled by NGOs to come and make money but the real beneficiary is the NGO. So, there are many people here who are simply opportunistic people. Some of that land has been subdivided into very small patches which some people thought they would make millions [*of shillings] *from. What we have decided is to go ahead with our work. Some of these people know that there are other lines that have been planned and they are also buying land all over the place again to make our work difficult."*

However, according to the Witness NGO, there had not been an influx of new residents into the project affected areas, but instead families had resorted to sub-dividing their land amongst family members leading to a large increase in the number of PAPs and a multitude of very small plots of land which were very difficult to value.

The other issue of speculation which was highlighted by sources was the planting of crops immediately prior to valuation exercise as a means of obtaining higher levels of compensation. According with UETCL, many of the people who are now involved in the court case were also heavily involved in speculation: *"Those people in Court some of them have eaten their money after compensation and now they are turning around to claim for more money. Some of them build non-existent structure along the transmission line. These included shrines and mud and wattle grass thatched houses. Others planted high value crops like vanilla but in the following morning they were dry. We have pictures. How then can you compensate such a person? Others dug graves at night and buried them with banana stems. Are those genuine claims? Of course they are speculators."*

The Witness NGO also expressed concerns about these activities. The most prevalent form of speculation was putting fully grown plants into the project affected areas immediately prior to the valuation taking place: *"as many of the valuations were taking place during the dry season these plants literally withered away in no time*." It should be noted that allegations of speculation were not solely confined to the project sponsors. One resident in Malindi Village was also critical of speculators coming into the area saying "*I heard of people who went ahead* [presumably of the valuers] *and dug graves only to bury banana stems. They expected to get some money to relocate their 'dead' ones*."

The CGV also said that he was concerned about the high level of speculation. He said to a contact of Control Risks': *We have also had some problems where some individuals have put up structures in areas where we have surveyed for the transmission line. These are speculators and we cannot pay them. I believe those are the ones that are making noise."*

As a consequence of wide-spread speculative planting of crops, a directive was written by the Permanent Secretary of Ministry of Energy warning and stopping speculative investments within the [transmission line] corridor. CGV summoned Mukono district land officials for a meeting to rationalise its compensation rates, with revised rates being issued in November 2007. Actions were taken by the CGV in order to avoid issues surrounding speculation included *inter alia* the following: All crops described as young would not be compensated for and the actions must be communicated to PAPs for transparency purposes.

However, despite the emphasis on transparency, and that fact that the consultative committees took place in villages including Malindi and Buloba, enquiries with PAPs in both villages suggested that not all PAPs were aware of the decision not to compensate 'young crops'. For instance one resident said the following: *"They valued our property and then after a year of valuation and a person calling himself a government valuer came to tell us that young plants were not to be paid for yet they were listed at first."* However, of particular concern was the assertion made by residents that the introduction of an exemption for young plants was used arbitrarily as an excuse to exempt mature plants from the compensation calculation. One resident in Buloba Village made the following assertion: *"They valued in my presence and listed all the items on a form which I willingly signed because I agreed with the valuers. But I was not happy when I saw the eventual compensation because my crops that were mature were described as young and not paid for."* Another resident in the same village made a similar comment saying the following: "*I signed the valuation form, but I was not convinced with the compensation because most of my crops, especially my passion fruit project, were identified as young and were therefore not paid*." Another resident from the same village said that "*they came, listed all the crops on my plot and valued them, but to my surprise they identified all of them as young and I did not receive any payment even for the crops which were yielding*." Similar views were expressed by residents in Malindi Village. For instance, one resident, who is one of the claimants in courtm said that "*payment was made only to mature banana plants and the young ones we expected to benefit from in future were never considered*."

3.4.4. *Transparency*

The above referenced concerns in relation to transparency and arbitrary and unclear decision making appears to contradict the RCDAP which puts a high degree of emphasis on transparency. Enquiries in the project affected villages suggested that the initial sensitisation process which took place during 2007 was largely well received. For instance, the above referenced landowner owning several plots of land in Kito Village said "they *came and explained the process to us and promised us good pay* [compensation] *and we were happy. We thanked the government for the development but the implementers, particularly Mukono district land board disappointed us."*

The principal complaint in relation to transparency revolved around the fact that the district level compensation 'rate card' was hidden from PAPs during the compensation exercise meaning they were unaware of the rates which were being applied in the district. For instance, one resident of Malindi Village said "*the whole system was not transparent at all because there was no rate card for us to follow."* A resident of Buloba Village made a similar comment, saying that "*I was not given chance to look at the rate card."* Another resident from the same village said "*we were never given chance to explain our case nor to be listened too. The rates promised were never paid for, the rate cards used were never used and the treatment was very bad although we wanted the project to go on and be implemented*."

It should be noted that one resident from Malindi Village made allegations of bribery, suggesting that "*my crops were registered on a form which I consented to and signed. But at the time of payment they presented a different form with very low figures and you could see that other people were highly paid because they had provided 'motivations' to the valuers with tokens of mon*ey." Though none of the other sources approached in the course of the investigation made similarly explicit allegations of corruption at the local level, the apparent lack of transparency in the valuation process combined with apparent arbitrary decision making around the definition of 'young' plants of crops means that the compensation process allowed significant room for small-scale corruption to take place at the local level.

Though no explicit allegations were identified in relation to government figures at the village level, the Local Council Chairmen, one source from Buloba Village suggested that they paid a key role in the compensation process alleging that "*we have no help from lower levels* [of government] *if you do not have a good relationship with the chairman, no compensation can be approved."* As communicated in the appendix to this report, given the strong priority given by the government to development projects, there is significant pressure on local politicians to support projects in their areas and to be seen as pro-development. As such, local officials in many cases can be seen as farily unsympathetic to constituents who raise concerns in relation to development projects.

There have been suggestions by more than one of the PAPs approached in the course of the investigation that they were put under pressure from Local Council Chairmen and other local officials to accept their compensation payments. For instance, the above referenced PAP with plots of land in Kiro Village said that after he told his daughter not to sign what he described as a deficient compensation amount "*she was forced to sign under threats that she would be imprisoned if she refused another time."* However, most of the criticism of the role played by Local Council Chairmen was in relation to the grievance mechanism.

Though it has been impossible to prove or disprove individual allegations of government coercion in the project affected villages, independent sources, from media, NGOs and other, who have travelled to the area have made similar assertions of threads and intimidation.

3.4.5. *Delays in Payment*

The CGV takes the view that people are paidaccording to the current market value. However, it does appear to be significant confusion as to what precisely constitutes the 'current market value.' One of the major problems has been the increase in real estate values in the period since the initial assessments were made in 2008. Indeed, it seems that many of the current complainants are based in Kampala or Mukono districts where the value of land is very unstable due to the high rate of real estate growth within these precincts. Some of these complainants have gone back to claim current valuations which are higher than those calculated two years ago when the path of the T-lines were being surveyed.

Recently, four out of five claimants, in a court action brought against UETCL, were compensated in an out of court settlement at significantly higher rates than those originally offered. It has been suggested that the high out of court settlements were a consequence of rising real estate values:

3.4.6. *Variance between District Compensation Rates*

Problems seem to have occurred and one significant problem arose close to the borders between different districts as plants and other structures are valued at the district level. People have been compensated from Jinja up to Mutungo in Kampala. Any land that is border lying between Kampala and Wakiso district is tricky because the land valuation is done by the districts. So the issue is that a matooke [banana] plant in Wakiso is valued differently from that in Kampala yet the two plants might be just a metre away from each other which complicates the whole issue of valuation.

3.5. **Grievance Resolution**

3.5.1. *Background*

The previous section highlights the fact that there has been considerable disquiet in the project affected villages in relation to the BIP. Complaints in relation to compensation payments in large infrastructure projects are an inevitable part of the process and the information provided in Annex suggests that typically in infrastructure projects in Uganda where large amounts of land is needed, around 95 percent of people tend to accept an initial compensation offer. Consequently, 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 accessibly grievance mechanism for addressing appeals is paramount.

The RCDAP states that this makes the existence of an effective grievance mechanism a priority for addressing community complaints. The RCDAP strongly implies that the use of any third party grievance mechanism is important as it could potentially avoid the need for people to go to court. The document argues that this mechanism would better address grievances held by affected people that going to court, though it is important to note that the grievance mechanism does not preclude recourse to the judicial system: *'Most grievances can be settled with additional explanation efforts and some mediation using customary dispute settlement mechanisms. In contrast, resorting to the judicial system often results in long delays before a case is processed, may result in significant expenses to the complainant, and requires a complex mechanism involving experts and lawyers which can fall well beyond the complainant's control, and be counter productive to him/her. Also, courts may declare themselves not competent in matters related to informally owned property, which is the case in this project for all affected properties.'*

The other key driver towards the establishment of an effective grievance mechanism is implicit in the fact that RCDAP is explicit in stating that in implementing the BIP, UETCL is committed to apply the 'IFC's social and environmental policies', which in turn state that an effective grievance mechanism should be set up. Under the IFC's fifth performance standard, entitled 'Land Acquisition and Involuntary Resettlement,' the following is stated in reference to a grievance mechanism: *'The project is expected to establish a grievance mechanism consistent with Performance Standard 1 to receive and address specific concerns about compensation and relocation that are raised by displaced persons or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner.'*

Performance Standard 1, to which the fifth performance standard refers, states the following: *"The client will establish a grievance mechanism to receive and facilitate resolution of the affected communities' concerns and grievances ... The grievance mechanism ... should address concerns promptly, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities , and at no cost and without retribution. The mechanism should not impede access to judicial or administrative remedies. The client will inform the affected communities about the mechanism in the course of its community engagement process."*

3.5.2. *Mechanism*

The mechanism outlined in the RCDAP document for managing grievances involves a trigger mechanism leading to mediation by third parties in the event that a complainant is not satisfied by any action taken by UETCL:

- Registration by UETCL of the complaint, grievance or dispute;
- Processing by UETCL of the grievance or dispute until closure is established based on evidence that acceptable action was taken; and
- In the event where the complainant is not satisfied with action taken by UETCL as a result of the complaint, an amicable mediation can be triggered involving a mediation committee independent from the Project.

Complaints that cannot be closed to the complainant's satisfaction will be handed over to a mediation committee established at District (LC5) level that will include the following individuals:

- One representative of the LC5 (District Level) Administration;
- One UETCL representative acting as an observer;
- Three representatives of the affected people, including at least one woman, chosen from LC1 Councillors (village-level Local Council Chairmen) and/or amongst community based organizations, elders, customary authorities;
- One representative of the witness NGO.

The reason for including LC1 Councillors, which are the Local Council Chairmen at the village level, was explained in the SEA report, drafted by Burnside in December 2006: *'Generally, community leaders know the individual PAPs and have the political and social responsibility for the community members.'*

The same report also gave details on the mechanism for submitting a grievance, suggesting that Local Council Chairmen would act as the gatekeepers for complaints from PAPs. The complaints would then be investigated by InterAid, the Witness NGO, before being communicated to UETCL: *'A grievance form has been prepared and will be available through the chairpersons of the local villages. The Sub County Committees will also be used to channel the forms and vet the grievance issues. They will identify which ones can be solved locally or one that has to go to higher level beyond the village and Sub-county... InterAid will investigate the concern and first make a determination of its legitimacy. Assuming the issue to be a valid concern, InterAid will communicate the issue to UETCL and facilitate the process to resolve the issue.'*

3.5.3. *Effectiveness*

According to the project Promoter, the Grievance Review Committee comprising of local leaders, Witness NGO and UETCL/BEL representatives was constituted to review the grievances or complaints regarding compensation. The mechanism still exists.

However, the EIB-CMinvestigation in Kampala and in the projected affected areas, suggests that there was a significant problem with the GRC in terms of both its local visibility and its effectiveness. Independent sources believe that the body had ever been made operational or described it as "non-functional." In principle, the process for addressing a complaint to the GRC was very simple: Any aggrieved PAP had to pick up a form from his Local (Council) Chairman, fill in the details, register the complaint and leave it to the Local Council Chairman who would forward the complaint to the Witness NGO.

However, most of the PAPs approached in the course of the investigation were only loosely aware of the body and also alleged that Local Council Chairmen at village level had been active in curtailing the role of the body. Moreover there was a high level of suspicion that the GRC was not independent as required in the RCDAP. According to a source at Wakisi Sub Country level: *"I knew about the grievance committee but it was the project sponsors that constituted it rather than people being given chance to participate in choosing it to be represented. The Chairperson and Sub County Chief of the Sub County were supposed to be part of the of the committee but when we ask them, they tell us that they are never invited or involved in such activities of the committee. The committee is just a shadow comprising of [village level] Local Council leaders in affected areas who are instead used by BEL to defeat the local people complaining."*

It was the conduct of the Local Council Chairmen that was highlighted by a number of different sources living in affected villages. This is important as the mechanism underpinning the process of submitting a grievance to the GRCs appears to grant a 'gatekeeper' role to these officials. As stated in the previous section, there is an understanding that for government priority development projects, local government officials are under considerable pressure to be seen as supportive of the project. Therefore there are widespread allegations that some Local Council Chairmen used their influence to render the GRC ineffective as they were reluctant to address any complaints from PAPs in relation to the project. Moreover, allegations were identified that Local Council Chairmen had been given roles with project companies, giving them an additional rationale to dismiss grievances.

For instance, one resident of Malindi Village complained of a conflict of interest involving the Local Council Chairman of Buloba Central working as a liaison officer for Salini Construction. Another resident from the same village complained that "*I heard about the grievance committee and the fact it comprised Local Council leaders who were promised compensation on defeating us. It has not helped us at all.*" Another resident from Malindi Village was even more adamant saying that one of the principal problems was a "*result of lack of support from local leaders who in turn became employees of the project.*" Another resident from Buloba Village said that "*if you speak to your chairman* [about compensation issues] *he will side with the project and accuse you of frustrating the project.*"

The adverse reports from PAPs on the role played by Local Council Chairmen blocking access to the GRCs could explain why there was little recognition of InterAid and its role on the GRC. For instance, one resident of Malindi Village said that "*we have heard of InterAid but they only surfaced in high level meetings involving the project sponsors.*" Though no allegations were identified in the local communities of InterAid taking the side of the government in disputes, there appears to be little recognition of its role, and no one spoke of InterAid actively looking to support the interests of the PAPs.

EIB-CM investigation suggests that the GRC was considered ineffective on issues related to compensation even by project sponsors. Enquiries with an official on the Bujagali Implementation Project Unit ("BIPU"), confirmed the GRC's lack of utility in addressing compensation issues. He said that the GRC had been disbanded because of its lack of competence in issues in relation to the valuation of land. The official commented as follows: *"We later realised that the competence of the committee in terms of valuation of land was not right. We disbanded them because they did not have expertise in valuing land. But their reports were reviewed by consultants, UETCL and later submitted to the Chief Government Valuer. Once approve, we disclose this information to the public. However, the room was open that if someone felt that he/she was unhappy he could go to Court."*

The same source at the BIPU expanded this comment to say that the GRC had proven very effective at addressing issues of inter-spousal complaints following the receipt of compensation but not at addressing issues in relation to compensation. The view expressed by one resident of Buloba Village that "*the grievance committee has never been effective which is why even the company employed* [presumably from BEL] *were telling us to court.*" Another resident from the same village said that "*the local council leaders we did not have the powers to complain so we had to go to court.*" However, the strongest statement came from a resident of Malindi Village who said that "*what prompted me to go to court was poor pay…* [However] *we would not have needed to go to court if the grievance committee had been effective.*"

In the course of the investigation, the EIB-CMencountered a strong sentiment that going to court was the automatic recourse despite the fact that the RCDAP suggested that one of the key reasons for setting up an effective grievance mechanism was to avoid this happening. A resident of Buloba Village, who is one of the 557 involved in the court case, said that "*the grievance committee was never effective, that is why even the project company employees were simply telling us to go to court.*" Another resident of the same village said *"I am not aware of the grievance committee because we made appeals but* [they] *were never considered. The local council leaders told us that we did not have powers to complain; that is why we joined the group that went to court.*

3.6. **Court Cases**

3.6.1. *Status of Court Cases*

Five Individuals

The five claimants involved in this court case have accepted an out of court settlement offered by UETCL. The out of court settlement provided each of the individuals who accepted the offer a very significant increase on the original agreed compensation amount:

- Alice Namiburu accepted an offer of USh 7 million having originally been offered USh 1.4 million;
- Andrew Kiwanuku accepted an offer of USh 58 million having originally been offered USh 16 million;
- Judith Nakyira accepted an offer of USh 105 million having originally been offered USh 26 million;
- Rosemary Tukahirwa accepted an offer of USh 21 million having originally been offered USh 5.6 million;

The project Promoter referred to the high ratio of the out of court settlement to the initial compensation offer, explaining that the out-of-court settlement was based on current market values for the claimants properties as opposed to the values at the time of the initial valuation. The plaintiffs noted as 1st through 5th were located in an urban area and the properties affected included land and house. The value of these properties is governed by market forces as opposed to compensation rates for crops that are developed by relevant Government District Land Boards with guidance from the Chief Government Valuer.

Different sources have attested to the rapid increase in real estate values in the Kampala and Mukono areas in the last few years. However, none of the sources were of the opinion that this alone could explain the increase in the compensation payment. As stated above, one may soundly argue that this illustrates that the initial offers of compensation were inadequate.

The fifth claimant, Emmy Tweyambe ("Tweyambe") who refused the original compensation offer, had reportedly been, in the first instance, offered a sum of USh 30 million in compensation. At the time of the EIB-CMinvestigation, his situation remains unresolved. Tweyambe said that UETCL had offered a further compensation offer of Ush45 million, which he rejected and further indicated that he had approached UETCL directly with a proposal for a revised compensation value of USh 77 million;

557 Individuals

Sources close to the Ugandan government have been largely dismissive of the case on the basis that many of these people are simply speculators and 95 percent of them had already signed for compensation. Moreover, UETCL had expressed its strong intention to contest this court case because of the dangerous precedent that would be set if it settled out of court on similar terms to the other case. However, the EIB-CMunderstood that the Ministry of Energy would prefer a rapid resolution to the class action and would see very favourably a settlement out of court..

During both CM visits meetings were held with the legal counsel of the 557 class action plaintiffs, Muwema & Mugerwa Advocates & Solicitors. Furthermore the issues on the T-line were discussed with representatives of UECTL, the Ministry of Energy and Mineral Development (MEMD), the Uganda Electricity Generation Company (UEDG) and BEL.

During the visit in June 2010 the legal counsel, Muwema & Mugerwa Advocates & Solicitors, representing the 557 people of the class action, informed the EIB-CMthat representatives from BEL contacted them to obtain the list of plaintiffs held by the counsel. Furthermore the EIB-CMwas 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-CMvisit there had been no response from BEL or UECTL.

The court hearing had been fixed for November, but the Trial judge was transferred and the matter reallocated to another Judge. The legal counsel is following up on this reallocation in order to ensure an early hearing date. He is also meeting the plaintiffs at the end of October to inform them on the new developments.

3.7. **Overview of Land compensation in Uganda**

3.7.1. *Regulatory framework*

Legislation relating to land compensation is scattered through various instruments, and responsibilities relating to land-use and -management are vested in a number of different government departments and institutions, sometimes conflicting or overlapping. In general, the legislation governing compensation is broad-brush. More detailed regulations relating to specific procedures have in many cases not been drawn up, despite in some cases being provided for in legislation dating back decades.

The main legal instruments governing the acquisition of land for public interest (including public works), compensation and resettlement are the 1998 Land Act and the national constitution. The Land Act made operational all the 1995 constitutional reforms and provisions relating to land. The 1965 Land Acquisition Act remains operational except where provisions are superseded by the Constitution and Land Act. The National Environment Act (1995) and the Physical Planning Act (2010) (which replaced the 1964 Town and Country Planning Act) also contain provisions relevant to land acquisition and compensation. Depending on the nature of the project for which land is being acquired, other relevant legislation may be found in the Electricity Act (1999), the Uganda National Roads Authority Act (2006), Water Statute (1995), etc.

The relevant passage from the constitution (Article 237 governing land ownership) states that:

1. Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution.

2. Notwithstanding clause (1) of this article:

   (a) the Government or a local government may, subject to article 26 of this Constitution, acquire land in the public interest; and the conditions governing such acquisition shall be as prescribed by Parliament.

3. Land in Uganda shall be owned in accordance with the following land tenure systems:

   (a) customary
   (b) freehold
   (c) mailo
   (d) leasehold

Article 26 on protection from deprivation of property additionally states that:

1. Every person has a right to own property either individually or in association with others.

2. No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied-
   (a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and

   (b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for:

      (i) prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property.
      (ii) a right of access to a court of law by any person who has an interest or right over the property.

Article 74 of the Land Act (1998) essentially extends the scope of Article 26 of the constitution to include public works, stating that:

1. Where it is necessary to execute public works on any land, an authorised undertaker shall enter into mutual agreement with occupier or owner of the land in accordance with this Act, and where no agreement is reached, the Minister may, compulsorily acquire land in accordance with section 43 of this Act.

2. An authorised undertaker executing public works on land under this section shall promptly pay compensation to any person having an interest in the land for any damage caused to crops or buildings, and for the land and materials taken or used for the works.

3. Any dispute as to compensation payable under subsection (3) of this section shall be referred to a Land Tribunal.

Although the Land Acquisition Act states that the Minister of Lands should make regulations for the assessment and payment of compensation, no such regulations have ever been produced.

However, a number of other specific provisions have an impact on acquisition and compensation processes. A key provision comes in Section 40 of the Land Act, governing treatment of women and other vulnerable groups. The provision requires that before any transaction can be carried out on land on which a family resides or from which it derives sustenance, there must be full consultation with the spouse and dependent children of majority age. Therefore, effectively, the consent of all members of a family or clan is legally required before an acquisition or compensation settlement can proceed.

Additional national policy documents contain provisions for the conduct of land-acquisition and compensation processes, notably the Environmental Impact Assessment Regulations (1998).

Land tenure systems Uganda's multiple systems of land tenure are the main complicating factor in seeking to apply relevant legislation and mechanisms relating to land acquisition and compensation. Four different types of tenure are legally recognised

The **mailo system** came into being as a result of the 1900 Buganda Agreement between the British government and the Buganda kingdom. Areas of land were accorded to the Buganda monarchy, and to all Buganda chiefs and other notables to own in perpetuity. Peasants already on the land were given no legal rights and became tenants, paying rent to their landlord. Certificates of title are attached to mailo land.

Freehold tenure also came into existence during colonial times, and primarily exists in western parts of the country. Grants of freehold land in perpetuity were made first by the colonial government and later by the Uganda Land Commission. Again, grantees were entitled to a certificate of title.

Leasehold is a contractual ownership system. A grant of land can be made by a mailo or freehold owner, or by the government or ULC. Each agreement is for a specified period and subject to agreed conditions, including the payment of rent. A title deed is grantable for a lease of more than three years.

Customary tenure has two broad classifications: communal customary tenure (mainly in northern and parts of eastern Uganda); and individual/family/clan customary tenure (central, western, parts of northern and south-western Uganda). The 1995 constitution formally recognised what is the de facto system of holding for more than 80% of Uganda's land. Customary tenants can occupy mailo, freehold, leasehold or public land. Occupation is asserted by activities such as crop-growing or exercising customary rights to husband animals.

3.7.2. *Dispute resolution*

The constitution also provides for the creation of district land boards, and district, sub-county and urban land tribunals, whose jurisdiction should include (under Article 243 relating to Land Tribunals):

> The determination of disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the Uganda Land Commission or other authority with responsibility relating to land.
>
> The determination of any disputes relating to the amount of compensation to be paid for land acquired.

However, these tribunals are yet to begin functioning properly. This is largely because there are inadequate resources to set up and staff them, as well as because in recent years there has been a trend towards the subdivision of existing districts and creation of new units, complicating the implementation of district-level initiatives and the devolution of powers. Consequently, as provided for in the 1965 Land Acquisition Act, appeals and disputes are still referred to the High Court, with failure to devolve powers having created a bottleneck situation.

It is notable that, under current legislation, there are no judicial channels for affected people to pursue grievances relating to the design or location of a project, or to contest the need for land-acquisition or land-use changes. Once the government has permitted the action, the only legal action permissible to affected parties is to challenge the levels of compensation to which they are entitled.

3.7.2.1. Typical management of compensation issues for projects with a government stake

Given the relatively small amounts of land held by the government (most government-controlled land is in national parks, and other reserves and protected areas), it is generally unable to provide adequate land for large-scale commercial or infrastructure projects. However, for projects in which the government has any stake – which generally include all national infrastructure developments and donor-assisted projects – the state will bear the cost of, and responsibility for, land acquisition and compensation.

Although the Land Acquisition Act states that the minister of lands should make regulations for the assessment and payment of compensation, no such regulations have ever been produced. There is therefore no ultimate authority or formula governing the valuation of assets for compensation.

In theory, valuation rates for compensation purposes should be drawn up at the local level to take into account particular market characteristics. However, in practice, it is rare that any administrative tier below district level has a trained valuer. Even at district level, the post may not have been filled and, in this case, the task is often subcontracted to a private company or consultant, or carried out by a government official from elsewhere. (On large projects, it is not uncommon for all or most functions associated with the assessment and payment of compensation to be subcontracted because of personnel shortages.) Once compensation values have been calculated, they must be approved by the government valuer or somebody authorised to act on their behalf.

An independent valuation and a government valuation are also theoretically supposed to be made in all compensation cases. However, in practice, this often does not occur, partly because of the scarcity of private land evaluators, and partly because of poor understanding of the process. Consequently, property is often assessed only by the government side.

In cases of dispute over valuation, the complaint would typically be referred to the person who had made the initial assessment, whether a government official or hired consultant. This can sometimes be problematic in cases where subcontractors have been used on short-term contracts and are then unavailable for follow-up work, negatively affecting consistency. However, it is usually possible to refer initial appeals to the original valuer.

In cases of injurious affection or other longer-term processes, a lack of continuity becomes a more serious issue. The government valuer again has to approve the revaluation, or decision to maintain the initial valuation.

Compensation must be paid in full before people can be obliged to vacate their land or abide by usage restrictions. No set proportion of land must be acquired before it is seen as viable for a project to begin, though thresholds are set on a case-by-case basis. These tend to be based on perceived levels of risk, with high percentage requirements being imposed in projects where it is thought that there may be resistance, contentious legal issues or other forms of delay.

In most cases where substantial amounts of land are required for large infrastructure projects, and where the project is not opposed by the affected communities, around 95% of people affected tend to accept an initial compensation offer. However, the proportion can be substantially lower on mailo land because of difficulties in ascertaining ownership as a result of large numbers of 'absentee' landlords.

In theory, delays to compensation payments should not occur because of insufficient funds. Every government agency or department that pays compensation has a fund allocated annually from the national budget. Should the required sum exceed the budget estimate, there is leeway to move funds from other budget lines. However, bureaucracy, inefficiency and outright corruption can all contribute to poor budget execution and delays.

Flagrant circumvention of legislation and due process – for instance, paying cash-in-hand compensation to those affected, even before an environmental impact assessment (EIA) has been completed – tends to only occur in relation to relatively small private-sector developments, such as hotels. There have been no suggestions that projects involving donors have seen compensation paid prior to full assessments taking place.

Public consultation in environmental impact assessments

The EIA guidelines contain basic requirements for the involvement of local communities in the planning of projects that are likely to have a direct impact on them. These guidelines set out a number of key project phases at which public opinion and feedback must be solicited and incorporated:

When preparing the initial Environmental Impact Statement, the developer is required to:

- Publicise the intended project, its anticipated effects and benefits through the media in a language that the affected communities understand.

- Hold meetings with the affected communities to explain the project and its effects, in convenient places approved by local leaders

Once the statement has been submitted to the lead agency and is found to be satisfactory, the public should be invited to submit written comments. Again, this stage

should be publicised through appropriate media channels.

A public hearing may also be deemed appropriate at this stage, particularly if the statement notes potentially controversial elements to the project or if there are trans-boundary issues. The hearing is supposed to enable the executive director to make a just decision on whether to approve – or how otherwise to respond to – the statement.

Public participation should also be sought in the subsequent phase, the Environment Impact Study, which deals with the identification of possible impacts. The scoping exercise for the study should, as far as possible, involve consultation with the potentially affected communities, as well as NGOs, the private sector and any other interested parties. Meetings should be arranged to obtain their comments on what to include in the study and what alternatives should be considered.

These stages are effectively the main, if not only, formal opportunity for individuals or communities to voice wider concerns about proposed projects and associated land acquisitions, and to put forward objections or alternatives.

3.7.2.2. Factors affecting land acquisition and compensation processes

Aside from legislative imperfections, a range of socio-economic and political factors can influence grievances relating to acquisition and compensation processes. While there are some common problems, others are closely related to particular regions where certain land systems prevail. There are also general differences between projects located in urban and rural areas.

3.7.2.2.1. Under-staffing and capacity constraints

Capacity constraints, in terms of human, financial and material resources, affect all government departments to some degree. With regard to land acquisition and compensation issues, this tends to cause problems at a number of key stages.

Notably, efforts to create, update and maintain land records have only been partially successful. Still only a small proportion of people in Uganda hold titles to the land that they inhabit. The relatively high incidence of title forgery and fraud exacerbates bureaucratic inefficiency. This frequently leads to delays in identifying the ultimate owner of a piece of land, or creates disagreement over the precise location and measurements of land to be compensated. (Bureaucracy and low capacity are not the only causes of inadequate land-titling. Notably, although the government and NGOs have promulgated numerous sensitisation campaigns about the desirability of acquiring official title documents, there is often underlying apprehension among ordinary Ugandans that documentation processes could be carried out unscrupulously to alter boundaries and deprive them of parts of their land. There is also the issue that the fees necessary to organise a survey and acquire a title can make the process seem like an unnecessary use of scare household resources.)

There are also particular bottlenecks at the office of the government valuer. Only the valuer has the executive authority to sign off on valuations. Although his staff can make assessments, there are an insufficient number of them to meet demand.

It is normal practice to subcontract some or all parts of land-acquisition processes to private consultants as a result of capacity constraints. This can include boundary-marking, valuation, payment of compensation and the organisation of resettlement. The varying quality and capability of subcontracted service providers pose a significant threat to the consistency of assessments.

Interested parties may also in some cases become involved in subcontracting tasks that should be the government's responsibility. This has been the case with the Tamoil oil pipeline from Eldoret to Kampala. Tamoil – the major stakeholder in a project that includes both the Kenyan and Ugandan governments – has undertaken the valuation exercise itself, going beyond its contractual obligations in an attempt to expedite the project. However, such arrangements clearly have the potential to muddy the waters in terms of where responsibilities lie. Although allegations obviously arise that government-run processes are subject to bias towards a government agenda, at least in such cases the division of responsibilities is reasonably clear.

3.7.2.2.2. Communication and information

As noted above, there are clear guidelines governing public consultation, and the dissemination of relevant information to affected communities and individuals. Clearly, the ideal is that the involvement of a public with local knowledge can greatly assist in identifying a project's potential environmental impacts and possible mitigation measures, possibly raising points and suggestions that would be missed by outside assessors. Public involvement should also give those who will be affected by a project an opportunity to shape its construction and operation, hopefully with the outcome of building a constructive longer-term relationship between the project and the surrounding community.

However, the nature and number of public forums related to a particular project are often inadequate. A public hearing on an Environmental Impact Statement may, for example, be the first opportunity a community has to hear about the nature of the planned project, its precise location, and anticipated negative and positive impacts, as well as the proposed mitigation measures to address the negative impacts. It is not uncommon for only one public hearing to be held at this stage, with resource constraints often given as a reason why more public meetings cannot be organised.

In the case of large-scale and technically complex projects, doubts are often raised as to whether one – or even two or three – hearings can be sufficient for people to fully understand and absorb the implications of a given project, as well as ask all their questions and give appropriate feedback. The demographics of an area tend to have a bearing on how adequate community-consultation exercises are perceived to be. In rural areas, where levels of literacy are lower and economic activities are largely restricted to small-scale agriculture, understanding of a project and its implications tends to be more tenuous. By contrast, in urban or peri-urban areas, overall educational levels are likely to be higher, as are levels of appreciation of more diversified economic activities. More rapid comprehension of a project and its implications is therefore likely, as well as greater appreciation of the actual benefits of infrastructural development.

3.7.2.2.3. Misinformation

Low levels of literacy and technical knowledge, and a lack of knowledge about their rights and legal position can make communities vulnerable to misinformation and rumours. For instance, the main source of information in many rural parts of Uganda is local radio, the output of which is of an extremely variable standard, and which can frequently air subjective views, conjecture and personal opinion. Equally, it is not uncommon for local businesspeople, political figures or NGOs to pay for slots in which they pursue a particular agenda. As such, communities are quite likely to hear unbalanced or unfounded information relating to infrastructure projects and land acquisitions in their area.

In such instances, the onus – fairly or otherwise – falls on companies and investors to set the record straight. Without reliable first-hand information, it is extremely difficult for third parties, such as more responsible professional media outlets or NGOs, to dispel communities' fears and speak positively of a project.

3.7.2.2.4. Inadequate participation by women

As noted above, there is a legal requirement for a spouse and any adult children to be consulted before a sale or compensation payment is agreed. However, land ownership in Uganda is seen as very much a male preserve; only around 7% of Ugandan women have any land rights in their own name. As such, any community meetings or consultations that are advertised as being anything to do with land ownership are likely to be attended almost exclusively by men. Consultations that are expressly advertised at heads of household would be more likely to attract widows and single women, though special efforts would need to be taken to attract a genuine cross-section of age and gender.

The consultation clause is therefore likely to regularly fall down in implementation. Men will be relied on to relay information to the rest of the household, but are ultimately likely to make the final decision regarding what is seen as 'their' land.

Women experience particular problems in asserting their land rights even when they should legally be acknowledged as title-holders or in customary ownership of land. There is a widespread but erroneous belief that women cannot own land, and even when it is acknowledged in fact that they can, it is often not acknowledged in practice. For instance, it is not at all uncommon for widows, and divorced or separated women to have their plots encroached on by neighbours or male relatives, or simply to be forced from their land altogether. Women attempting to assert their land rights to claim compensation are therefore likely to face special problems. Even in cases where women are able to win judgments in favour of their land rights in local courts, the judicial system's capacity to enforce such judgments is virtually non-existent.

3.7.2.2.5. Trusted interlocutors

NGOs have proliferated in Uganda in recent years as available donor funding has increased. Although the Uganda NGO Forum represents almost 400 NGOs active in various thematic areas, more than 3,000 NGOs are estimated to be formally registered in Uganda. While NGOs were once generally perceived to be neutral, there is now no automatic popular trust in organisations that purport to represent community interests. There are widespread suspicions that it is too easy to form NGOs and pursue particular agendas. There is also frustration at the types of activity undertaken by many – particularly urban-based – NGOs, which are seen as being overly focused on workshops, press statements and 'sensitisation', rather than on areas of practical assistance.

Consequently, NGOs involved as community representatives or neutral monitors in relation to infrastructure-development projects, and compensation or resettlement processes are unlikely to be automatically viewed as credible interlocutors by the affected community, unless they have established genuine relationships or have evident community-based credentials.

Equally, elected local officials cannot always be assumed to be genuine representatives of affected communities or parties. Given the strong priority that the government accords to development activities, there is significant pressure on local politicians – the majority of whom belong to Museveni's ruling NRM-O – to support projects in their areas and be seen to be pro-development. As such, local officials in many cases are seen to be fairly unsympathetic to constituents who raise concerns in relation to development projects.

Unsympathetic attitudes from local officials can be a major factor in community members failing to voice their true opinions or concerns at meetings and consultations. There have been reports of community members with known objections been explicitly warned by officials not to speak out. Without support, concerned community members may fear being seen as troublemakers and facing recriminations from officials. Equally, they may fear being isolated in the community if, for example, they raise a concern in a public forum and do not receive any backing.

Outright corruption is also an issue. There have been reports of officials refusing to represent constituents' interests with regard to land rights and compensation unless they receive some form of payment or other incentive. There have also been suggestions of people with grievances being bought off on an individual basis – either by a developer or by local officials –to prevent them from rallying others and creating a united front. Processes may also be open to abuse by third parties. In 2009, for instance, 600 Kampala residents accused the managing director of a consulting firm contracted to delineate the route of the Kampala Northern Bypass of illegally retaining their land-title documents for a number of years and attempting to extort payment for their return. All such examples have the potential to undermine public faith in agents or institutions that are in theory supposed to be neutral or supporting their interests.

3.7.2.2.6. Speculation

The most regularly publicised patterns of land speculation in Uganda involve wealthy and sometimes politically connected individuals, who are suspected of using inside information about planned developments to pre-emptively buy up land that can subsequently be sold on or compensated for at higher value. Of late, major allegations have centred on land around the Lake Albert oil fields. Communities in western Uganda have made multiple allegations that, predating the confirmation of commercial viability, there was a rush by well-connected individuals, sometimes acting through proxies, to acquire land in areas thought to be oil-rich. In some cases, large tracts of land near Lake Albert were bought up, purportedly for purposes such as bio-fuel production, though in most instances there is little sign of the land being put to such use. More recently, in 2010, Museveni announced a moratorium on the issuing of land titles around Bunyoro sub-region in western Uganda following allegations that elite figures were fraudulently acquiring deeds to communal land in prospective oil areas, with apparent inside knowledge of planned drilling sites.

In and around Kampala, land speculation has been a phenomenon since the 1990s, with the effect that a large number of absentee landlords had interests around the city and many highly desirable plots were left idle. The rapid rise in land prices in the last decade has seen some speculators make substantial profits. However, in the majority of cases this has been related to real-estate acquisitions; there is not a strong sense that land speculation has been a major issue with regard to infrastructure projects that would attract compensation. Overall, while many allegations of speculation are genuine, others – particularly those relating to high-profile developments – are likely to be the result of politically motivated innuendo, urban myth and communities' fears of disenfranchisement.

3.7.2.2.7. Problems with resettlement

Although not a firm legal requirement, those affected by projects are in many cases offered a choice of compensation options. These commonly include a cash payment, compensation in kind in the form of, for example, building materials and equipment – either wholly or partially in place of cash – or inclusion on a managed resettlement programme.

There is a sense that affected people may accept a cash settlement at the outset of a project, not because they see it as an especially desirable option, but as a result of misgivings and negative connotations associated with resettlement. These may arise because of a lack of confidence that resettlement will be carried out sensitively, with people afraid that they will be asked to adopt inappropriate new livelihoods, or be moved to locations where they fear being viewed as 'outsiders' and treated with hostility. Meanwhile, although resettlement packages are supposed to ensure that affected people are given access to facilities comparable to those they have lost, the issue is highly subjective. Often, while facilities may be superficially similar, people feel they lose out in terms of factors such as proximity to relatives and transport routes, inferior or just unfamiliar materials used to construct houses and other community buildings, soil fertility, and intangibles such as a sense of community.

There is also a sense that the outset of a project is the best time to profit from it, when investors are new to the area and are perceived as having significant resources at their disposal. Given misgivings about non-cash options, and general uncertainty about their rights and status, a one-off benefit is often all that most people expect from projects in their area. However, this acceptance may be equally attributable to an attitude of 'taking what they can get' and not trusting that an improved offer would be forthcoming, as much as being entirely satisfied with the offer.

3.7.2.2.8. Trends and pressures arising as a result of demand for land by investors

Issues related to land are currently among the most contentious in Uganda. Land is a major political battleground for various lobbies and interest groups, of which the strongest are the competing voices of investors and the land rights lobby.

Investment is growing in large-scale agribusiness projects. Large investments have recently been made, or are being mooted, in the growing of staple food crops by governments from the Middle East or North Africa, as well as by private investors. There is also the key development of the country's nascent oil and gas industry. As well as requiring significant tracts of land in the west of the country for exploration and production activities, the industry is likely to cause significant disruption to local communities, an issue that has already prompted disputes with regard to the industry's liability for compensation. Additional land in other parts of the country will also be needed for key infrastructure such as planned pipelines to connect the Lake Albert area to Kenya and Rwanda, and new roads due to be built to oil sites.

The oil industry in particular is very keen for the government to become involved in land acquisitions for entirely private ventures to circumvent the time-consuming and potentially contentious processes that companies currently face in clearing land under the current system. The Uganda Chamber of Mines and Petroleum, a new association set up to represent these increasingly influential industries, is now lobbying for the government to take responsibility for negotiating with and compensating land-owners and residents, as happens in other mining countries such as South Africa. There is also pressure for Uganda to look to countries in southern Africa that have conducted systematic programmes of resettlement from rural to urban areas to accord priority to commercial agriculture and mining in rural areas.

The push for the government to become involved in land-clearance and compensation is likely to have some success and may well lead to communities being treated more robustly as the government seeks to fast-track investment projects, whether or not any actual legislative changes are made. However, the motives of the industry's lobbies are probably financial as much as pragmatic; as people become of aware of the importance of their land to the progress of major extractives projects, compensation demands are likely to rise substantially. This explains why investors are keen for the government to bear responsibility to avoid private investors becoming embroiled in negotiations over escalating costs.

However, more radical proposals such as the urbanisation programme are unlikely to gain traction for political reasons. It would be relatively straightforward to mobilise MPs to oppose such policies, given that radical changes to Ugandans' relationship with land would be highly emotive and have minimal support among the electorate at large. The fact that many MPs and political figures at all levels are significant landowners adds an extra element of conservative resistance.

On the land-rights side, efforts are being made to assert the cultural and socio-economic primacy of individual landholding in a way that is not gratuitously anti-investment or anti-development. This could, for instance, involve investors being able to lease land directly from current landlords, with ultimate ownership remaining with citizens rather than the state. Ultimately, this is likely to be more of a symbolic than substantive reassertion of citizen's rights. However, given that the formalisation and regularisation of ownership on an individual basis remains in its early stages of implementation, and continues to be a highly emotive and culturally important issue, a huge gap is likely to persist between the modernising imperatives of large-scale investors, and the fairly fundamental rights and practices being demanded by individuals and communities.

4. BLASTING EFFECTS

4.1. Allegations

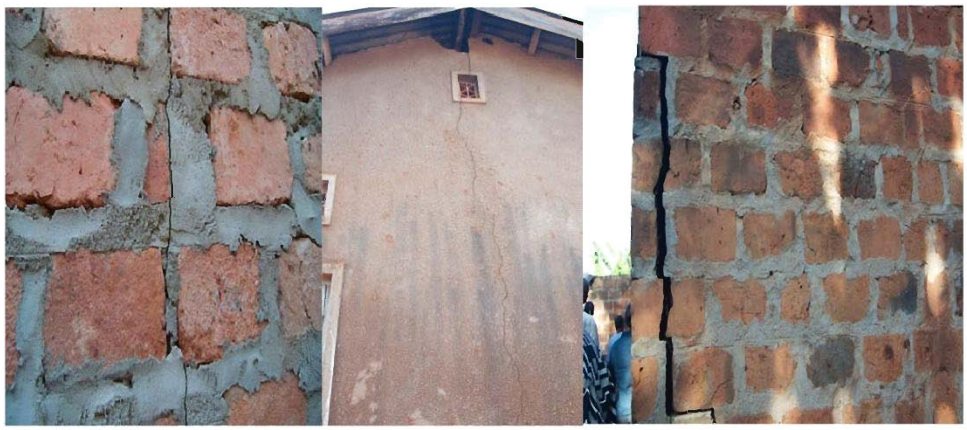
4.1.1. Project affected people residing in the area of Malindi village, close to the blasting sites, have alleged that a number of houses in the area around the construction site – for those who were not evicted – have started to crack due to the project related works (excavation, blasting, ...). Furthermore, many people in that area have been affected by the ongoing blasting coming from the construction site, affecting the health and well being of the people and the cattle in the area. Complainants claim that unexpected project impacts, such as cracks resulting from project related works, material and psychological nuisance caused by repetitive blasting, are also subject to compensation.

4.2. Borrower's views

4.2.1. The blasting operations are the responsibility of Salini Costruttori, a subcontractor of BEL. According to information provided by BEL, the Contractor has reviewed the complaints and has made field inspections of the claimed damages. In addition, the Contractor has retained an international consultant to review the blasting program and to investigate the claimed damage. It is noted that prior to any blasting, the Contractor performed a door to door review of all public dwellings within at least 500 m of any proposed blasting site. The structures were identified and photos were taken to document the condition of the structures. During the subsequent blasts, recording devices were located in the project areas to record vibrations generated by the blasting. The data was collected and analyzed by the Contractor and the Contractor's consultant. As complaints were received, the Contractor reviewed the complaints and inspected the structures.

4.2.2. On the basis of the results provided by the Contractor and their consultant, BEL took the view that:

- The blasting has not had any impact on any public structures and that the expressed concern that damage had been the result of the blasting by nearby residents was likely due to the recent discovery of cracks, etc. that may have already been present for some time or have been caused by natural processes including poor construction and maintenance.
- There were no complaints generated within the area where the pre-blast survey recorded the initial condition of the structures and as these were the structures closest to the blasting, that if any, these would be the structures to show blast related damage.
- The effects from the blasts decrease exponentially with distance from the blast site. For example structures located 1,000 m from the blast site are exposed to about 4 times less vibration than the houses located at a distance of 500 m where no damage has been claimed. That the ability by humans to sense vibration is very high but that they lack the ability to distinguish magnitudes. Very frequently the perception of the motion translates into conclusions that the felt sensation is sufficient to cause damage. In reality, the level of vibration required to cause even minor cosmetic damage to structures is much higher than the level where humans perceive damage may occur.
- The Contractor has been performing the blasting that generally conforms to vibration values of 20 mm/sec which are considered as a reasonable standard (per USBM.)
- The Contractor has routinely submitted the complaints to their insurance carrier.



Cracks in Malindi houses

4.3. EIB-CM site visits

1. During its first site visit, on 11/02/2010, the EIB-CMconducted a public hearing at the Malindi village, attended by around 200 residents, where a large number of them expressed their concerns about project impacts and lack of proper compensation, namely regarding the impacts related to the blasting activity.



EIB-CM public meeting In Malindi

2. The most frequent complaint concerned impacts on houses (cracks). By that time, the EIB-CMvisited 4 houses in the center of the village, close to the main road, and within a radius of 2 km from a blasting site, where large cracks were visible in the outside.

3. Moreover, the EIB-CMwas presented with a case of miscarriage, a premature birth with loss of the child occurred on 03/12/2010, arguably attributed to the blasting activity. Affected people complainted about having been obliged to leave the area sometimes for hours, with consequent loss of working time. Negative effects on poultry were also repetitively evoked: lower production of milk by cows and of eggs by chicken.

4. During its second site visit, on 10/06/2010, the EIB-CMvisited more than 20 houses presenting important cracks (external and internal), all of which were situated within the 2 Km radius. In both visits, extensive documentary evidence (documents, photographs, voice and video records) was gathered.



Affected people in Malindi showing the cracks in their houses

4.4. Follow-up by the Borrower

4.4.1. As a follow up to initial CM remarks, the Borrower has retained its own independent blasting expert who in mid April visited the project site to assess the blasting effects. Initial conclusions from this expert after inspecting a wide number of structures indicated there is no observable blast related damage to structures previously examined (with one set of exceptions) and that the claimed damage was the result of foundation settlement, improper construction techniques or materials and/or a lack of general maintenance for example allowing water infiltration to go unchecked. In the case of the observed damage, the damage was of very recent origin occurring at the new 5 km quarry site where some of the early blasts resulted in flyrock contacting several public structures that were extremely close (well within 300 m of the blast site.) These structures were of course vacated prior to the blasts as per normal safety precautions. The damages have been immediately recorded and repairs initiated. Also, the Borrower and expert immediately met with the Contractor to discuss the matter that caused the damage (flyrock) and provided recommendations for the immediate change of procedures which the Contractor is now implementing.

4.4.2. Additional recommendations by the Borrower's consultant included steps to reduce air-overpressure. Air-overpressure is a lesser known blasting parameter and relates to low frequency pressure waves that are felt but not heard being below audible levels to humans. Generally air-overpressure does not cause physical damage unless structures are positioned very close to blasts having high overpressure values but it does have a greater ability to startle or surprise people. While this pressure wave also dissipated with distance, atmospheric conditions can cause complaints from locations of 5 km or more from the blast. In these locations, the vibration may be very low, but as the air-overpressure may be felt a split second following the initial vibration, the result of feeling a minor vibration and then feeling the overpressure wave that can startle people frequently translated into a perception that damage has occurred.

4.5. **Status of Information available**

4.5.1. The following documents produced by Salini Costruttori on the Bujagali Hydro-Power Project and relevant to blasting operation have been submitted to the EIB-CM:

- "Study of the Public Complaints due to Blasting Activities", dated May 2010 (subsequently, the Salini Study)
- Blasting Monitoring Record Sheet - Left Bank (2008-2009), undated (subsequently, the Monitoring Sheet)
- Detailed Method Statement for Rock Drilling and Blasting, dated July 2008
- Materials Management, dated December 2008
- "Evaluation of Bujagali Hydro-Power Project Rock Blasting Practices and Resulting Public Complaints" (the Revey Study), prepared by ReveyAssociates, Inc., the independent expert on Blasting retained by the Borrower and dated November 2010

4.5.2. The CM was unable to obtain a copy of the "Blasting Noise/Vibration Management Plan", or any similar document.

4.5.3. The EIB-CMhas also been provided with a draft report by the Witness NGO on "The effects of blasting on Infrastructures and animal husbandry in areas around the Bujagali energy project hydro dam site", dated April 2010.

4.6. **Assessment of the blasting damages on local constructions**

4.6.1. The most important points to keep in mind before analysing blasting effects are:

- All buildings can crack under the influence of their environment (variation in temperature, humidity, differential settling of foundations, etc.). That's the reason why it's very difficult to identify impacts resulting fromnearby blasting operations from those caused by other forces, including normal wear and tear. The difficulty increases if previously no survey of buildings was done before the blasting operations

- Individuals are very sensitive to vibration. Blast-induced vibration is perceived with substantially higher intensity than its actual intensity, as shown in Table 1 below.

- How vibrations can be defined? Vibrations can be defined as regularly repeated movement of a physical object around a fixed point. The parameter normally used to assess the ground vibration is the peak particle velocity (PPV) expressed in millimetres per second (mm/s). In order to completely define ground vibration, the amplitude and frequency of the motion are measured in the three orthogonal directions generally in terms of velocity which is considered to be the best descriptor for assessing human comfort and the potential damage response of structures.

Table 1: Blasting complaints[17]

Peak Particle Velocity (PPV) - mm/s	**% of Complaints**
<2.54	1.00%
2.54	1.50%
5.00	5.00%
10.20	10.00%
15.20	**15.00%**
25.40	20.00%
38.00	40.00%
50.8018	50.00%
101.60	70.00%

4.6.2. More particularly when a building or a structure is submitted to blast vibrations, its response will differ greatly, even if all other variables being equal, depending upon the principal frequency of the ground motion: the lower the frequency, the more serious the damage.

4.6.3. In the case of an absence of an initial assessment of the constructions, it is rather difficult, if not impossible, to take a view "a posteriori" if a specific damage has been caused by blasting (or any other vibration due to the project), or by factors exogenous to the project, such as any natural processes and/or poor construction and maintenance.

4.6.4. In this specific case, we can add that other factors induced by the project construction, have not been considered such as vibration inducted by heavy truck traffic, which could affect constructions, have not beenassessed prior to project construction. Indeed, a substantial portion of the complaints concern houses close to the main road.

4.6.5. On this blasting damage issue, the contractor provides a study made by SALINI. (SALINI STUDY commented below). This study showsthat the standard for the PPVs limit, PPV<50mm/s, that SALINI had decided to follow, was never over passed. The Study of Complaintsalso plots the results in statistical forms but fails to stress just how poor the correlations are. Frequency data are scanty. In SALINI's Blasting Monitoring Record sheet, frequencies are often given, in a specific range, generally in the range of 8 - 100 Hz. The data provided by SALINI is analyzed in detail in Table 2 below.

4.6.6. As mentioned, the limit used in the Report on Blasting Activities made by SALINI (commented below) is 50mm/s. Now this limit is usually considered as a limit beyond which structural damage can occur in solid constructions (EU standards) and for frequencies equal or greater than 50Hz. For this reason, the range of 8 to 100Hz used in SALINI Blasting Monitoring Sheet (detailed comments in below paragraph), cannot allow to use, for all the cases, the standard chosen.

4.6.7. On the other hand, as said previously, the Bujagalibuildings typology is very far from the "solid construction (EU standards)" used in the standard followed by SALINI:

(i) the constructions are of very low standard, most of them in poor repair condition;
(ii) houses are built using burnt bricks and cement, roofed with iron sheets and most of them are not plastered;
(iii) in most of the cases, it is not only question of structural damages but also of cosmetic damages (cracks);
(iv) most of the blasting generated waves are at lower frequencies.

[17]Adapted from USBM, quoted in: Frank J. Lucca: Effective Blast Design and Optimization, p.19. Terra Dinamica L.L.C. ©2003

[18]50 mm/s is the limit considered by SALINI in its Study of Complaints

4.6.8. As a conclusion, the upper limit, 50mm/s, used in the SALINI STUDY for Peak Particle Velocity (PPV) is applicable to solid constructions and for frequencies equal to or greater than 50Hz. Such threshold values for PPVs apply to modern, standard quality concrete structures; they can hardly be applied to the low standard, plaster-on-lathe buildingsprevailing in the area of Bujagali, especially considering the lower frequencies reported for the blasting generated waves.

4.6.9. In the absence of uniform EU standards, for the Budjagali dwellings two EU standards could have been used, which are widely used as reference standards - the German standard DIN 4150, and the British standard, BS 7385 (1993):

4.6.10. According to the German standard, the limit would have been between 3mm/s (<10Hz) and 10mm/s (>50Hz). The German standard DIN4150 provides limits below which it is very unlikely that there will be any cosmetic damage to buildings. For structures that are of great intrinsic value and are particularly sensitive to vibration, transient vibration should not exceed 3mm/s at low frequencies. Allowable levels increase to 8mm/s at 50Hz and 10mm/s at 100Hz and above.The German standard DIN 4150 sets vibration limits applicable to fragile buildings and structures. This standard provides for an upper (PPV), of between 3 mm/s and 10 mm/s, corresponding to frequencies below 10 Hz and above 50 Hz, respectively.

4.6.11. According to the British standard, guidance relevant to acceptable vibration at the foundation of buildings is contained within BS 7385 (1993): Evaluation and measurement for vibration in buildings Part 2: Guide to damage levels from ground-borne vibration. This states that that there should typically be no cosmetic damage if transient vibration does not exceed 15mm/sat low frequencies rising to 20mm/s at 15Hz and 50mm/s at 40Hz and above. These guidelines relate to relatively modern buildings and are normally reduced to 50% or less for more critical buildings. Critical buildings include premises with machinery that is highly sensitive to vibration or historic buildings that may be in poor repair, including residential properties.

4.6.12. Using the German and British standard, we can calculate an area over which the PPV are below 10mm/s, and so blasting are "presumably" not affecting constructions. In the absence of reliable and comprehensive seismographic records (document commented below), it is proposed to base this assessment on the 95% confidence estimates of blasting vibrations (PPV) provided by the SALINI STUDY[19]. Table 2 below, taken from the SALINI STUDY, gives PPV (Transversal) data and the distance from the blasting site, as well as the Scaled Distance and the quantity of explosive used. This Table shows that, beyond 1800m, PPVs are consistently below 10mm/s. So the distance from which the buildings will not be affected may be considered 1800m.

Table 2: Relation of PPV to the distance from the blasting site

Distance from blasting site (m)	**PPV (mm/s)**	**SD (m/kg^2)**	**Total Explosive (kg)**
500	19,78	52,04	6000
500	18,21	60,15	1085
500	16,77	69,52	1483
600	14,19	93,31	3225
600	13,89	96,81	1674
1000	13,33	104,08	6000
1000	11,61	132,61	3412
1000	11,31	139,03	1483
1000	11,29	154,57	7325
1200	9,6	185,48	7325

[19]Annex 12 to SALINI's Study of the Public Complaints Due to Blasting Activities

Distance from blasting site (m)	PPV (mm/s)	SD (m/kg^2)	Total Explosive (kg)
1400	13,02	108,44	200
1400	11,01	145,72	6000
1500	10,77	151,33	9825
1500	10,58	156,12	6000
1500	8,99	208,01	16198
1500	8,45	231,85	7325
1600	10,2	166,53	6000
1600	8,15	247,31	7325
1700	9,86	176,94	6000
1800	11,29	139,43	200
1800	9,54	187,35	6000
1800	9,54	187,35	6000
2000	9,4	192,45	9450
2000	8,99	208,17	6000
2000	8,37	235,7	6678
2000	7,84	264,79	7740
2000	7,84	264,79	7740
2000	7,18	309,13	7325
2500	7,91	260,21	6000
2500	7,29	300,73	1085
2500	6,71	347,58	1483
2500	6,32	386,42	7325
2700	6,42	375,39	1483
3000	7,47	288,28	7400
3000	7,13	312,25	6000
3000	6,41	377,04	3060
3000	6,41	377,04	3060
3000	6,22	397,18	7740
3000	6,22	397,18	7740
3000	6,22	397,18	7740
3000	5,7	463,7	7325
3500	5,7	463,38	7740
4000	6,83	336,86	2115
4000	4,84	618,27	7325
4500	5,66	468,37	6000
6000	4,81	624,5	6000

4.7. **Other impacts of blasting activities**

4.7.1. The miscarriage case has been documented to the EIB-CM. According to the Borrower, several attempts and meetings were held with the affected stakeholder to get the documentation related to the miscarriage from the medical personnel/health unit that handled the matter but the Borrower was unable to receive supplemental documentation despite further reminders/requests.

4.7.2. The Witness NGO has already started some evaluation work regarding the impacts on poultry (cows giving less milk and chickens laying fewer eggs). According to the work done, even if the direct correlation with blasting is yet to be established, a decrease of more than 50% in laid eggs has identified.

4.7.3. Other inconveniencies, such as lost work hours, have also not been fully identified and quantified, and no compensation has been envisaged.

4.8. **Draft report by the Witness NGO on blasting effects**

4.8.1. During the follow-up by the InterAid, the Witness NGO, with communities affected by the project, blasting concerns were raised by the communities in a series meetings:.During preliminary steps they spoke about observations on the blasting effect on populations, and after havin observed no consideration about those observations from the contractor, they decide to ask for compensations:
Observations

- 01/10/2009, during the meeting organized by BEL, the district local government CAO raised the issue of the effect of blasting that it had damaged people's houses and wanted to know what the project was doing to address the matter.
- 12/03/2009, during updating of project progress by BEL to Budondo Local government staff, the issue of blasting was raised by the Sub County leadership that it had been reported by the community members to be a grievance the project was not addressing.
- 09/02/2010, during project update by BEL at Ivunamba and Bujagali villages, the communities during the meeting also raised the same issue about the effects of blasting that houses had been damaged and the project was not caring.

Asking for compensations

- 10/02/2010, the community members during a meeting with BEL staff in Kyabirwa also wanted to be compensated alleging that the blasting had damaged the houses.
- 27/03/2010, during the handover of Naminya RC Primary School to the community on 27th March 2010, the district leadership also echoed the issue of effects of blasting and that the people affected had not been given a reply on their complaints.

4.8.2. The following paragraphs quote the findings from the Witness NGO report, mainly related to damage to housing construction and to impacts on poultry output (the new economic resource further to the stop of the fishing activity):

4.8.3. *"It was also allegedly reported by some of the residents that the blasting affected the animals to the extent that miscarriages were reported to have occurred in animals and humans. Those chicks that were laying eggs, the number of eggs laid reduced drastically as a result of this."*

4.8.4. *"As a result of these complaints, the Witness NGO staff carried out a sample of affected houses and collected data on eggs laid by the chicken that were distributed by the project to groups of women and men as an Income Generating Activity under the Community development Action Plan."*

4.8.5. *"Two villages (Malindi and Buloba) on the Western side of the River Nile and one village (Naminya) on the eastern side were sampled and households that were affected by the blasting were visited to assess the situation or effect/impact. A total of 54 houses were seen and the findings per house are in the Table Below."*

4.8.6. *"Based on the above analysis, it is evident that the number of eggs laid reduced during the period under study. Total monthly eggs laid reduced from 1,119 in June 2007 to 511 in February 2008, yet the total number of chicken remained the same (149)."*

4.8.7. *"The data collected on eggs laid by other poultry projects within the project affected area to establish the impact of the blasting is still being analyzed. Once the data analysis is completed, then the final report that will include the photographs taken of the affected houses will be submitted by the witness NGO for comparison with other independent studies that are being carried out by experts in this field."*

4.8.8. *"Note that the report by the Witness NGO is based on observations and qualitative information obtained from the field provided by the PAPs whose buildings and poultry and animal projects were impacted by the blasting effects."*

4.9. **Notes on the MONITORING SHEET**

4.9.1. This document, supplied by SALINI is a key document.Its analysis reveals that if we compare the Monitoring Sheet and the Seismograph Log Sheet (the two documents that we have in hands), some important conclusions on the quality of the data appeared, and thus, gives a good idea on the validity of SALINI's data.

4.9.2. The Monitoring sheet is a document prepared by Salini which lists data recorded on diverse characteristics of some blasts. It has no data on the explosives used, but does lists the location & distance of the seismograph, the PPVs & frequencies plus other data.

4.9.3. Logically the data should be consistent with that shown on the Seismograph Log Sheet and indeed there are some areas of consistency, notably on the PPVs.

4.9.4. However, there are far more discrepancies:

- The Log Sheet lists logs of 55 blasts from January 10, 2008 to September 11, 2008. The Monitoring Record covers 48 blasts from January 4, 2008 to March 26, 2009. 18 of these show no seismic effect (the sensor was not triggered), so there were only 30 recorded blasts.
- Of these 5 are not listed in the Log Sheet (the dates are January 4, February 1, April 1, May 6 & August 21).
- There are only 16 blasts listed on both sheets. In 13 of these blasts the PPVs are identical but that of March 7, 2008 had slightly different values; note all of the blasts on the Log Sheet are dated in 2008, so all future dates cited here will be 2008 unless otherwise noted. Only two of these blasts failed to trigger the seismograph sensor, according to the Monitoring Sheet & yet some PPVs were recorded on the Log Sheet (the dates are May 13 & September 13).
- However, in almost all cases, the distances cited from the sensor to the blast location are very different. In most case the Log Sheet has a longer distance.
- In many cases even the locations are different, for example: January 24; the Log Sheet shows a distance of 453m from Kikubamutwe, the Monitoring Sheet has 232m from the office area. Other extreme examples are on April 16 with distances varying from 100 to 1050m & May 6 from 100 to 736m & on both dates the Monitoring Sheet reports monitoring at villages (at 700+m distance) whereas the Log Sheet shows 100m to a location near to a cofferdam.

4.9.5. The main conclusion at this point is to question the validity of the data shown in these two records. Subsequent analysis in this review has chosen to concentrate on the more directly relevant Log Sheet, assuming that its data is correct. However, the discrepancies described above should be kept in mind.

4.10. **Review of the SALINI STUDY**

The SALINI STUDY is using several concepts. It's aim is to prove with the help of those concepts that the complains are irrelevant because, from their point of view, PPVs are decreasing with the distance from the blasting site, and so all PPVs would be below the standard 50mm/s. The Study is composed of the following information: a table with the complains' list, a seismograph log sheet, and some graphs on several kind of PPV's (vertical, transverse and Radial).Other paragraphs explain some key concepts on blasting as: Regression Analysis, Peak Particule Velocity (PPV), scaled distance (SD), Square Root Scaling, and finally a table and some graphs about Regression Analysis.

4.10.1. The **List of Complaints** adds up to over 300 and apart from a few in late 2007, all are dated from January to June 2008, with one single exception dated July 15, somewhat unusual in that it is from a pastor regarding damage to a church.

4.10.1.1. Several questions arise:

- Have there been no subsequent complaints after July 2008, since clearly blasting operations continued?
- If there have been no other complaints then, why not? Were blasting procedures altered? Or were effectively virtually all of the weaker structures already damaged?

4.10.1.2. Discrepancies were found in the table of complaints made by SALINI :

- The distances listed are often unhelpful in that they bear little or no relationship to the locations shown on the Map.
- The 50+ complaints at Kikubamutwe show no distance; the map shows two villages to be 1-3km from the blast sites. Similarly, the houses at Kyabirwa are listed at distances ranging from 0.5 to 12km; the Map has +/-2km). Interestingly, Malindi village, closest to the blast sites on the Map has no distances listed.

4.10.2. **Seismograph Log Sheet:**

Because the Promotor wants to prove that at a certain distance the blast had not affected constructions (so the complains are not relevant). He decides to use the seismograph Log sheet to explain that the intensity of the blast at the location of the dwelling are always below the choosen standard of 50mm/s (standard below which according to the Promotor no damages can appear on dwellings).
Of this fact the seismograph Log sheetis evidently the key document upon which any assessment has to be based. Accordingly it has been reviewed in detail:

- The distances listed are frequently at odds with those derived from the Map.
- The key data on the Log Sheet are the PPVs, the distances & the calculated SD (Scaled Distance) & these are the values plotted on the following graphs & ultimately used to assess the validity of the complaints.
- It contains:
  - A first attempt to derive the PPV as a function of the distance from a blast.
  - It presents a PPV limit of 50mm/s which is apparently listed as an acceptable limit for *"Residential homes with plaster on lath construction".*
- The Graphs available show an enormous scatter & large variations from the apparent trend lines that are plotted. There are two evident conclusions:
  - i) only 7 blasts gave rise to PPVs in excess of Salini's 50 mm/s target limit.
  - ii) There is only very vague trend for PPVs to become lower at greater distances.
  - However, a third conclusion is that at any given distance and specific blast the PPV could range from as little as ~zero to over 50 mm/s (at short distances) or from ~zero to 10-20 mm/s at distances of ~500-1000m.
- It derives a trend for PPVs to diminish with distance. However, this is done by plotting only two results for any specific blast: readings close (typically 100m) & then 'far' (typically 700m). The results provide no indication as to the rate of decline of the PPV, i.e. is it constant, dropping at a more or less steady rate (a straight line relationship) or, does most of the drops occur close to the blast? These two relationships would give very different vales for PPVs at longer distances.

As a conclusion, and based on the elements given by the seismograph Log sheet, it seems to be very difficult to conclude that PPV is a linear function of the distance. And of this fact that the PPVs always decrease considerably when we are far from the site of the blast. That's why it's unsure that this decrease will be important enough for being safe that the PPVs will always be under the 50 mm/s at the location of the complains.

4.10.3. **The Regression Analysis**

Using this methodology SALINI wants again to prove the correlation between PPV and distance, more exactly the decrease of PPV with the increase of distance from blast site.

4.10.3.1. This type of analysis is commonly used to predict or derive otherwise unknown values based on a known relationship to some other 'known' value. It is, for example, commonly applied in hydrology to for example derive the flow at a specific site in a river, based on a historical relationship (regression analysis) showing that this flow is say 76% of the flow (which is known) at some other location. In other words Regression Analysis is a widely used mathematical or statistical technique in no way limited to blast analysis, as could be implied from the explanation in the Salini Study.

4.10.4. Salini has chosen the factor or variable 'Scaled Distance' (SD) as the known variable from which PPVs could be derived. However, the **Salini Explanation** and description of the analysis fails to mention a key point: the validity of the relationship or correlation between the two variables, knowing that this correlation is linked to ground conditions, typology of ground, which are data unknown. Salini explains that those variables are calculated with the use of the seismograph log sheet. Document on which the distances listed are frequently very different as the ones derived from the Map.

4.10.4.1. On their Regression analysis graffs, Salini show a factor 'R squared' (R2) known as the Coefficient of Determination, which is a measure of the accuracy of the relationship or correlation.

4.10.4.2. An R2 = 1, denotes a perfect correlation, i.e. the unknown variable can be precisely derived from the relationship established with the other known variable.

4.10.4.3. An R2 = 0 means that there is no statistical relationship between the variables.

4.10.4.4. To continue, an R2 value of say 0.7 indicates the derived variable will be approximately 70% accurate. Depending on the subject under analysis an R2 of say 0.8 is regarded as 'good', 0.6-0.8, as fair, 0.4-06 as poor & anything much less than 0.4 as very poor & hence of limited validity, recall that an R2 equal zero means that there is no correlation at all.

4.10.4.5. All graphs show inside the SALINI study show R2 values of 0.43, 0.25 & 0.36, all poor. Even the non-mathematically inclined can simply see by observation that the points plotted are widely scattered; with an SD of say 100, a PPV of anything between ~1 & ~10 mm/s could occur. For the graff PPV transverse, an important one for the dwelling damages, R=0.2502, which means that the results shown on the graffs are not at all qualitative data. (R value is usually high when there is a very large measurement made on site on PPVs at a large range of distances for a same blast. So having a R=0.25 means that there were very poor data coming from measurement on different distances.)

4.10.4.6. Over this factor R squared, SALINI had decided to add Confidence Limit concept: because Salini has dealt with this uncertainty by introducing a confidence limit, in brief by arbitrarily assuming that any PPV greater than 95% of the comparable results (i.e. at a similar SD) is incorrect. This is a reasonable approach to assessing the probability of an action but is no more than that.

4.10.4.7. Using all this concepts of calculation, the SALINI Report shows a table, where they give the results of their PPVs calculation for each complain.On the basis of the list of complaints and by some unknown means derives the actual date of the relevant blast (note that list of complaints provides only the date of the complaint). It then lists the characteristics of the blast (weight of explosives etc.) from the Log Sheet, converting this data into what is known as a 'charge weight' & calculates

the Scaled Distance (SD) for this specific event.Finally, the 95% confidence equation (shown on the three graphs) is applied to derive the 'acceptable' PPVs and since every one of these PPVs falls below the 50PPV limit, then none of the complaints are justified.
Using this PPVs calculation procedure, SALINI took the view that the seismograph datas are of enough quality to be used to define the PPvs on each location of each complain. Unfortunatly as proved several times on the previous paragraphs this statement of quality is not at all proved, and on the contrary a lot of elements show the poor quality of these datas. So this table, as it is based on resultes of calculations using these datas cannot help to know if the complaints are justified.

4.10.4.8. As an example for this poor quality of SALINI report, we can pick out this odd entry is for Namizi village: the long list of complaints shows a wide variety of dates from September 7, 2007 to May 12, 2008 with widely varying distances from 1-6km (with some blank). The regression analysis covers only one complaint date April 15 & for the appropriate range of distances. However, none of the 40+ complaints refer to this date.

4.10.4.9. As an example of the potential for error in this analysis and taking the blasting record on April 16. The Log Sheet records PPVs taken at the right bank & cofferdam at 736 & 100m distance respectively. By contrast the Monitoring Sheet for the same date records PPVs at Buloba village cited at 1050m distant on the left bank. The relevant point is that the PPVs at Buloba (over a kilometre away) are identical to those cited only 100m away at the cofferdam and it is these that were plotted on the graphs & used to derived the correlation equations. To illustrate the significance of this, the PPV vertical (~10mm/s) plotted at 100m distance (from the Log Sheet) is slightly below the normal expected value; when plotted at 1050m distance (from the Monitoring Record) it is at the 95% limit.

4.10.4.10. Another example: the Log Sheet has a result for a blast on July 22, with PPVs in the range of 9-13mm/s at a distance of 308m and with a rather high (but correctly calculated) SD of 302. For some unknown reason this result has not been plotted on the graphs. If this is done the three PPVs are all significantly outside the 95% limit.

4.10.4.11. The net result of these two points described above is that if the PPVs were plotted differently then the correlation equation would change and the 95% limit line would move and signify higher PPVs at the most relevant longer distances.

4.10.4.12. As an additional point to put it out is the fact that a lot of complains are taking into consideration with a SD values which are not clearly shown as qualitative values on this SALINI Report table.

4.10.4.13. The regression Analysis lists and analyzes 108 complaints & presumably these cover the full ~500 complaints actually made, simply by grouping complaints on a specific blast by common distances. A rough analysis of these 108 complaints shows that over 50% applied to SD values >100 & about 30% to SDs >200, with less than 15% applied to SDs below 50. Now referring to graphs were used in the regression analysis, about half of the values plotted were for SDs less than 50 & only 2-3 for SDs more than 200. This discrepancy further questions the validity of the already shaky relationship or correlation. For example, a regression analysis confined to logs with SD >50, i.e. covering the range of ~85% of the complaints would produce a different result & visually at any rate exhibit virtually no significant correlation, especially if the July 22 results were used.

4.11. **The Revey Study**

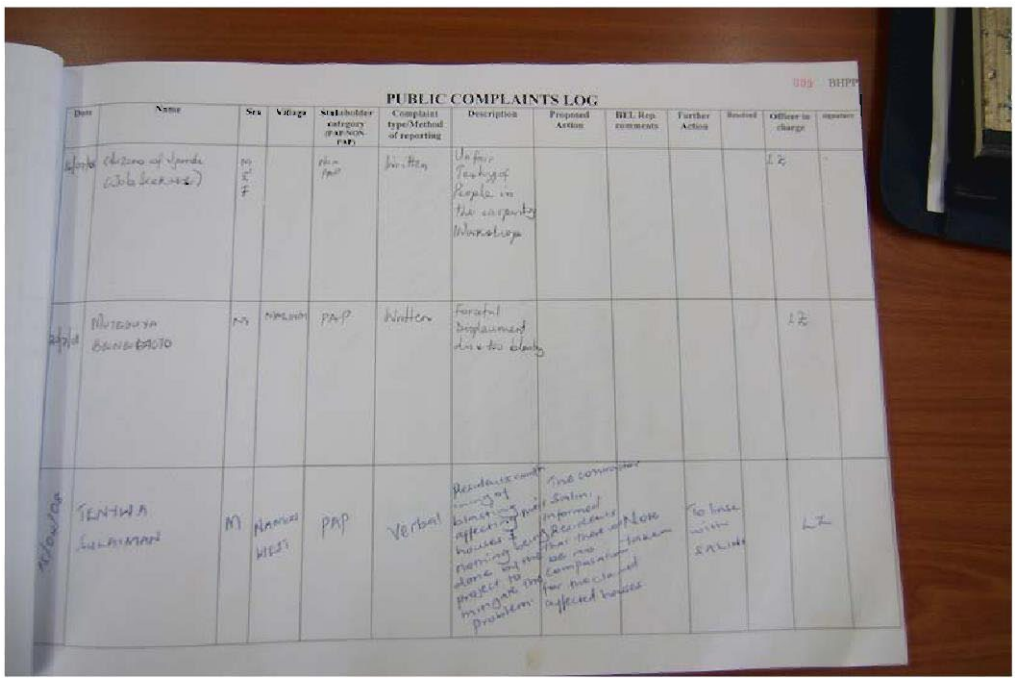
REVEY Associates Inc, is the independent expert on Blasting retained by the Borrower.

4.11.1. The "Evaluation of Bujagali Hydro-Power Project Rock Blasting Practices and Resulting Public Complaints" (the Revey Study), prepared by ReveyAssociates, Inc., dated November 2010 was provideed to the EIB-CMin December 2010. It provides a quite detailed review and investigation of the blasting practices used at Bujagali with reference to the complaints.

4.11.2. The Revey and Salini studies reach essentially the same conclusion, i.e. that complaints of the blasting damage are largely unfounded: *"... it is extremely unlikely that blasting is the direct cause of any new cracks, spalling plaster/stucco, and other forms of distress observed at the structures in the area Villages."*

4.11.3. The Revey study apparently used far more data on a larger number of blasts than Salini. It also introduced a new concept, 'air-overpressure', as a potential source of damage; the Salini Study had only considered the impact of vibrations. Revey noted that air-overpressure had frequently reached excessive levels (*"almost three times greater than the accepted safe limit at residential property"*, page 1) and yet still concluded that only minor damage might have occurred, without explaining the meaning of "minor" damages. Is that means that the constructions were not destroyed?

4.11.4. The study makes no actual analysis of the complaints provided in the Salini Study. It does note a total of 667 complaints, the last dated June 6, 2009. However, the Salini Study listed only about 300 complaints, the last dated in July 2008. Revey contains also references to reports by NITREX, a blasting consultant to Salini. The report is based on the analysis of 98 blasts more than twice the number analyzed in the Salini Study



BEL's complaints logbook

4.11.5. Revey notes that the construction contract apparently had no specific blasting specifications or standards. This is perhaps not unexpected given that Uganda is a developing country. In some respects the absence of such 'standards' can be, and effectively has been used as an excuse, in effect accepting some potential adverse consequences attributable to blasting. 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. Salini were surely well aware of the proximity and condition of the village housing.

4.11.6. Revey provides an interesting comparison between the Salini, NITREX (another consultancy report by a consultant working for Salini) and Revey results as to the relationship between PPV and distance. The following table compares the resulting values (at 95% confidence) for PPV (mm/s) at representative scaled distances. The wide variation is evident and any examination of the actual plots shows that the relationships are poor. It is worth noting that Revey has typically assigned somewhat higher PPVs than Salini.

Scaled Distance	Salini	NITREX	Revey
10	100	75	200
100	20	7	15

4.11.7. The comment above on the Salini Study remains valid, despite the larger number of blasts analyzed by Revey: any assessment of a PPV at a given location based on these relationships is only very, very approximate. To cite an extreme example, at a scaled distance of about 25, shows actual recorded PPVs varying between about 1 to almost 100.

4.11.8. In this context, the selection of appropriate vibration limits, i.e. peak particle velocities (PPV) which would avoid damage to structures, is a key issue.The Revey conclusion that 'damage is highly unlikely' is largely attributable to the adoption of the USBM Standard RI8507. This standard has PPV limits for plaster construction of 12.7 to 51 mm/s dependent on the frequency. The Salini Study has simply cited 50 mm/s—without reference to the source—as an acceptable limit for plaster on lath construction. This shows that the SALINI report is very aproximate, and omits many parameters.

4.11.9. The German Standard DIN 4150 has much lower acceptable PPVs, down to as low as 3 mm/s for sensitive structures at low frequencies. Revey discusses DIN 4150 but concludes that it is not based on actual damage testing and hence prefers RI8507. Revey also notes RI 8507 *"might be similar to how the plaster-covered brick homes of the villages near the blast sites might respond."*, but goes on to note that for the mud and wattle structures *"it is almost impossible to determine any damage that may be caused by blasting."* However, Revey retains the RI8507, notably the 50 mm/s standard, as the key measure of damage risk.

4.11.10. The relevance of these varying standards is best illustrated by the figure below:

Evaluation of Bujagali Hydro-Power Project Rock Blasting Practices and Resulting Public Complaints

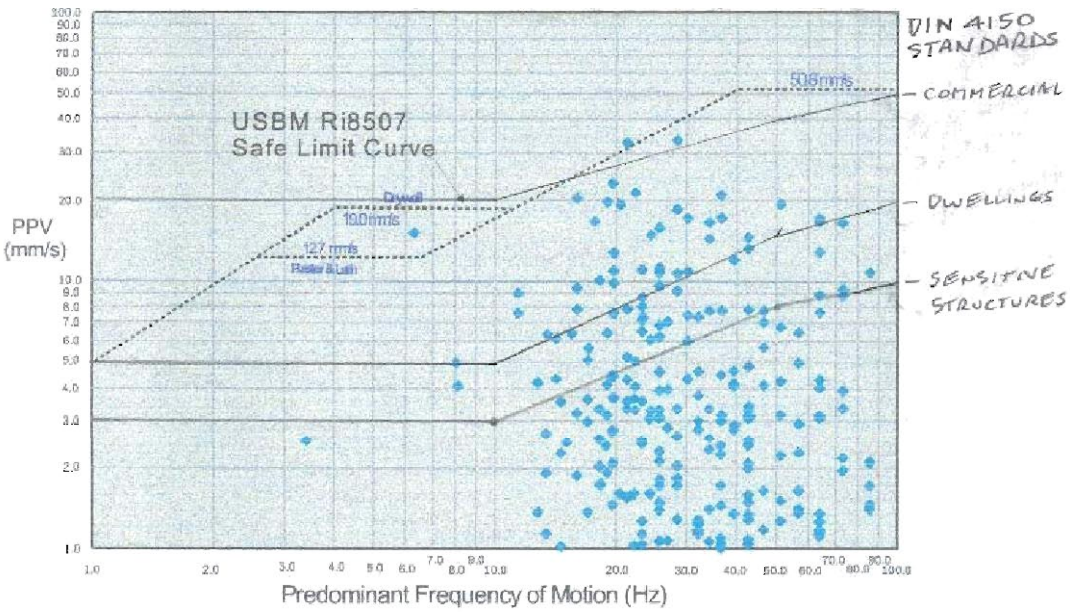


Figure 4.2 – Estimated* Vibration Intensity at 500m

Adapted from Figure 4.2 in the Revey Report (op.cit. p.20): The added continuous lines show the Vibration Intensity Limits for the three levels of building sensitivity according to DIN 4150 Standards, respectively.

4.11.11. The version in the Revey Report plots PPVs at a nominal distance of 500m (reasonably adopted since apparently most of the villages are at or are farther away than 500m). The figure shows over 200 results at varying frequencies. The source of the frequencies is not specified and there is no any frequency data. It is also unclear how 200+ data points (determined by eye) were derived from only 154 data points (page 18). Once again, key datas have uncertain origins.

4.11.12. The revised figure above includes theDIN 4150. The DIN standard has three different limits: the most relaxed is for 'Commercial' structures, the tightest is for 'Sensitive' structures with normal 'Dwellings' in between. The Commercial standard is very similar to RI8507 and only two of the results exceed this limit. At the other extreme about 68 (by eye), about a third of the total, exceed the Sensitive limit. About 17% exceed the Dwellings limit.

4.11.13. The choice of PPV limits has a huge impact on the validity of the damage claims. Moreover, it is doubtful if any of the cited standards are truly applicable to much of the construction actually in place in the affected villages. (There is no indication as to how many of the alleged damaged houses were of brick/plaster or mud and wattle)

4.11.14. Air over-pressure is a new concept in the Revey Study not mentioned in the Salini Study. In lay terms, so called 'vibrations' reflect trembling of the ground, air-overpressure reflects the actual 'blast' (which would knock you over if you were close enough). Revey notes that the impact of air-overpressure is comparable to that of a wind gust.The quoted Correlation Coefficient is 0.3305 (compared to 0.663 for vibrations). It is apparent that the actual correlation is very, very poor, even worse than that for vibrations. At a sample scaled distance of 100, recorded pressure readings range from as low as about 2Pa to over 250Pa. Despite this very poor relationship Revey has applied it to derive values for a nominal distance of 500m, as was done for vibrations.

4.11.15. Revey cites an air- overpressure limit of 89.3Pa as an accepted international standard and thennotes that no less than 48.4% of the recorded blasts had produced pressures in excess of this standard at the nominal 500m distance target. One measurement on November 21, 2008, at the village of Malindi, over a kilometre from the blast site, had recorded an over-pressure of 200Pa, more than twice the proposed limit. Revey notes that *"Monitoring data also indicates some structures were exposed to levels of air-overpressure at levels almost three* (times, sic?) *greater than the accepted safe limit."* Thus, this is a recognition of the non respect of the safe limit in some occasions, and so of the possibility that some structures damages came from overpressure.

4.11.16. The report also refers to actual measurements at the "Green Roof" house 650m from a blast which had suffered an over-pressure of 253.9Pa "*the resulting wall rattling in the building created measureable secondary ground* vibrationsThe report goes on to state that *"it would be wise to inspect this home …"* . It is of course odd that no such inspection has apparently been made by Salini or Revey and hence there is no indication as to the extent of any damage. The report also notes that to check for damage (due to over-pressure) *"inspections should be done at property located within 750m of blast areas"* It seems evident that damage from air-overpressure has not yet been adequately analyzed.

4.11.17. The report goes to some length to note that the blasting techniques in use should be improved and that there are significant inconsistencies and discrepancies in the analyses done by Salini and its consultant NITREX.

4.11.18. In addition to the impact of vibrations (the only topic addressed in the Salini Study) Revey includes not only air-overpressure but also flyrock, impacts on people and animals, and the impact on water and air quality. In all cases impacts were judged, *by the Revey report*, to be insignificant, with the sole exception of a few instances of flyrock and in effect noise and shock to the population.

5. SPIRITUAL ISSUES

5.1. Background information

5.1.1. Concerning the cultural assessment, the GoU developed a Cultural Property Management Plan (CPMP). This plan consist of: - "Chance finds" procedures; - Cultural and spiritual values plan of action; -Cultural site.

5.1.2. The CPMP which outlines the steps for a 'chance finds procedure' that was included in the EPC contractor's manual (and was originally part of the Resettlement and Community Development Action Plan in 2002) has now been updated. In updating the CPMP, the GoU has undertaken consultations with the relevant key stakeholders including the Busoga Kingdom and the communities. A stand alone CPMP that includes completion of the shelters and accompanying ceremonies to finally relocate the Budhagali Spirits and holding of a multi-denominational service for human remains buried on the island prior to inundation due to the filling of the reservoir has been disclosed by GoU in-country and in the World Bank's Infoshop in August 2010. A Memorandum of Understanding (MoU) between BEL and the Kingdom of Busoga has also been signed and is currently (end 2010) awaiting approval from the GoU Solicitor General. Once this approval is obtained, the implementation of the CPMP measures for the relocation and appeasement for the Spirits can commence.



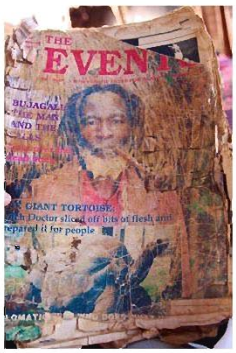
Bujagali Falls

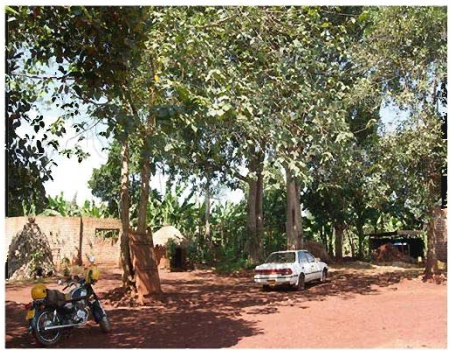
5.1.3. One of the issues raised by the complainants concerns the cultural and spiritual importance of the Bujagali Falls. This has been part of every other complaint regarding the BHP and was extensively dealt with both the World Bank's Inspection Panel and AfDB IRM reports.

5.1.4. In essence the complainants claim that the spiritual leader, Jaja Budhagaali (also known as Nábámbá Búdhágáalí), the 39th cultural and spiritual leader and the spiritual community of Bujagali Falls were not properly consulted. Furthermore they claim that Jaja Budhagaali was marginalised from the process and that a fake resettlement ceremony was organised with the complicity of the Government of Uganda and that as a result no proper spiritual resettlement ever took place.

5.1.5. According to information from t "Traditional Religion and Clans among the Busoga" Vol 1., it appears that Nábámbá Búdhágáalí is a músambwá, one of the real sons of Kintú. Its role in the mbugá of Kintú is to stretch goat skins and indicated by the name Nábámbá from the verb "okúbámbá" meaning to stretch. These skins are used as mats in the shrines. It is called a prince. It is believed that Nábámbá belongs to the clan of abáise Wágumá of the zebra clan (endházá). Their mother gave birth to twins: Wáibírá and the river Nábámbá, both of them are called Kiyírá, a name given to all the nephews of the abáise Wágumá clan. Nábámbá was nicknamed Búdhágáalí from the verb "okwêdhagá" meaning to play. This was so because he was fond of swimming. Nábámbá has two wifes namely, Kabúthwa and Igódómbé. Námámbá has his palace (émbugá) near the river Nile in Budóndó subcounty, Butémbé county, Idhíndhá district. The real spot is called Búdhágáalí near Búdhágáalí falls. It should be noted that the spirit Nábámbá chose to stay in this place and is free to shift to another place or stay where it is. Wáibírá, the twin brother of spirit which has residence at Náwántúmbí in Buzááyá county.







Jaja Bujagali

5.1.6. The Nábámbá Búdhágáalí spirit and its medium Nabamba Bujagali, or Jaja Budhagaali, are unquestionably tied to the 338 Busoga clans. The Nábámbá Búdhágáalí spirit can posses a spiritual leader (múswezí) from any of the Busoga clans.

5.1.7. Nfúudú is the múzimú of the deceased in whose home the émbugá of Kintú was built. Múzimú:is a spirit (ghost) of someone who died. Lubaale Nfuudu is the leader of Ntembe clan or assigned to Waguma

5.2. **Responsibility for cultural issues**

5.2.1. On the basis of the Cultural Management Plan issued by the Ministry of Energy and as confirmed during the EIB mission to Uganda, the Busoga Kingdom has the mandate to have the final say on cultural matters of the Busoga people. In that regard and with a view to taking in due consideration the position of the Busoga Kingdom, on 11 February 2010, the EIB delegation met the Prime Minister of the Busoga Kingdom who inter alia expressed his willingness to integrate Nabamba Bujagali in the consultation process for the appeasement of the Bujagali spirits.

5.2.2. On 12 February 2010, the Ministry of Energy forwarded to the EIB a copy of the reply of the Prime Minister of the Busoga Kingdom to the MoE's letter of 29 January 2010 signed by the Prime Minister of the Busoga Kingdom on 11 February 2010. In this letter, the Prime Minister of the Busoga Kingdom refers to Lubaale Nfuudu as the recognised spiritual medium and declares that the Busoga Kingdom "shall accommodate Nabamba Budhagali and make him accept the status quo".

5.2.3. In that regard, the EIB acknowledges 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 Busoga people. In this context, the EIB-CMhas gathered evidence of the early involvement of Nabamba Budhagali 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.

5.2.4. Indeed, available evidence and writings confirms that Bujagali Falls is the residence of a host of spirits ranging from high level Busoga to individual family spirits. In particular it is the residence of Nábámbá Búdhágáalí, the Busoga's most venerated, powerful and princely spirits. This spirit may take on multiple animate and inanimate forms.

5.3. **Bujagali Environmental Monitoring Committee**

It was mentioned in one BCAM meeting that there were some rivalries between the Spiritual leaders that is Jaja Budhagali and Nfudu on who was to take up the funds to facilitate appeasement of the Spirits. ***The Committee instead resolved that this matter be resolved in consultation with Busoga Kingdom during the planned inspections in Jinja. The Kingdom should also be asked to issue a Certificate of Completion upon finalisation of the cultural issues.***

Extract from the BECM March 2010 Report.

Opening Remarks by BEMC Chairman, including introductions by members
The Chairman welcomed the Busoga Kingdom delegation led by the Busoga Prime Minister. He then introduced the BEMC members and he did inform the Busoga delegation that within the Committee there are various stakeholder institutions such as NEMA, MEMD, UWA, ERA, DWRM, WMD, Local Governments, among others.
After the introductions, the Chairman informed the Busoga Kingdom delegation about the role of the Committee stating that its main mandate was to follow up and determine whether BEL had complied with the conditions approval in the EIA certificate, including the implementation of the social aspects such as cultural issues.

The Chairman informed the delegation that from the mentioned role above, the committee is interested in knowing the Kingdoms role in handling the cultural issues and what BEL should do to facilitate completion of the relocation and appeasement of the spirits.
The Chairman there after invited the Prime Minister/Katikkro of Busoga Kingdom to give his remarks and state the Kingdoms role in relocating spirits and handling other Cultural aspects.

Welcome Remarks by Busoga Kingdom
The Prime Minister/Katikkiro of Busoga Kingdom thanked the BEMC for inviting them to the meeting because from the meeting they will be able to judge who is right and wrong and hear the side view of the Kingdoms role in relocation of the Cultural Spirits.

Presentation of the kingdoms role in relocating the Spirits and handling of cultural aspects.
The Katikkiro informed the committee that there were 2 major issues supposed to be done by BEL and Busoga Kingdom which included;
1) BEL was supposed to transfer the Cultural Spirits and they were in agreement with it and also construct a Cultural center.
2) Number of agreements were signed between Busoga Kingdom and BEL and agreed that Busoga Kingdom looks for land for the Spirits.

The Katikkiro went further to inform the Committee that the first group from Busoga Kingdom that BEL was dealing with was no longer in office and was not conversant with the TORs made by BEL so the Kingdom had to revisit the terms by having various meetings from which the Kingdom came up with new requirements.

Originally BEL had given the Kingdom 21 million to facilitate transfer of the spirits and from the money temporary structures were constructed just because the money was not enough. From the funds got from BEL a number of issues came up where the Cultural Spirit leaders Jaja Budhagali and Nfudu started fighting for the ownership of the Spiritual home.

The Katikkiro informed the Committee that it was resolved that BEL handles the rest of the compensation of the spirits and built for them a new site while the Kingdom is left out of the matter but the Kingdom would only come in to handle the management of the site.
The Committee was informed that Kingdom needs an additional 39 million to buy land at Mutanda. The same money was to cover water and power facilities***. However the Kingdom is yet to come up with the actual estimate of what is required to complete implementation of the Cultural and spiritual issues associated with the project.***

REACTIONS FROM THE MEMBERS
BEL raised an issue of the wanting to know what the Kingdom used the 21 million for. And at the same time BEL informed the Kingdom delegation that it was not willing to add any more money to the Kingdom since originally money was sent to them and BEL knew that every component was adequately funded, the budget having originated from the Kingdom. BEL still assured the Committee that Busoga Kingdom had not made the accountability of the previous 21 million and it was not aware of the usage of the money so BEL wasn't in agreement of adding any more money.

The Committee observed that there were negotiations going on and apparently the spirits were relocated in a bush so the kingdom seriously needed money for completion.
The committee was informed by one of the members that the MEMD's obligation is to see that the main stakeholders namely BEL and Busoga Kingdom come to a compromise and be in agreement complete the relocation of the spirits.

RESPONSES BY KINGDOM
Reacting to an issue raised by BEL on the usage of the 21 million, the Katikkiro informed the members that the 21m was used to facilitate the relocation of the spirits and appeasement of the spirits and was not enough to complete construction of the cultural center.

Resolution
It was resolved that Busoga Kingdom submits accountability of the 21 million that was advanced to them, and the Ministry of Energy and Mineral Development in liaison with the Cultural Consultant take up the issue of completing the construction of the structures where the spirits will be relocated.

5.4. **Busoga Kingdom views**

5.4.1. When the EIB-CMmet with BEL on 10 June 2010 the meeting was suddenly joined by representatives of the Busoga Kingdom who handed over the accounts for the monies spent to BEL. They also provided the additional budget of USD 20.000 which they consider is needed to finish the relocation of the spirits.

5.4.2. Whilst being at the meeting with BEL the EIB-CMtook the opportunity to discuss the spiritual issue with the representatives of the Busoga Kingdom. The EIB-CMalready had the opportunity in February 2010 to meet with the Busoga Kingdom's Prime Minister who seems quite willing to solve the problem and offered to facilitate a meeting between Jaja Budhagaali and Nfudu. This meeting was also attended by the GoU's Cultural Consultant. To the CO's great surprise they were presented during the wrap-up meeting on 11 February 2010 with the GoU representatives and BEL with a letter from the Busoga Kingdom's Prime Minister addressed to the Minister with the same date as the meeting with the EIB-CMsome days previously stating that they accept the legitimacy of Nfudu and that they will deal with Jaja Budhagaali.

5.4.3. During the discussion it became evident that there are internal problems within the Busoga Kingdom regarding the representativeness of both spiritual leaders but mainly that the Kingdom was displeased with Jaja Budhagaali's involvement in the various complaints against the BHP. Furthermore it seemed that there was disapproval regarding the way of living and certain actions by Jaja Budhagaali, such as his many wives, short hair and eating in public places where meals are served that he should not consume. This seems to be confirmed by the book: "Traditional Religion and Clans among the Busoga" Vol 1. which mentions taboos for the múswezí múdhágáalí (i.e. Jaja Budhagaali): a) he is not allowed to eat chicken nor fish; b) he is not allowed to share a meal of matooke with other people except those possessed by Námámbá and who have been confirmed. That is why, he is called "Múlyá ntamú" meaning one who eats alone; c) he has to sleep in his shrine at the new moon for four days, without his wife; d) he is not allowed to have sex outside marriage otherwise the spirits punish or dessert him; e) he is not allowed to cut off his hair.

5.5. **Conclusions**

5.5.1. Notwithstanding all the items surrounding the spiritual issues it is clear to the EIB-CMthat Jaja Budhagaali 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.

5.5.2. The behaviour of BEL may be considered as very positive and accommodating as they did provide funds and are in fact the only party to do so regardless of the fact that they are the least responsible for these issues.

5.5.3. The EIB-CMtakes note of the recommendations made by the Ministry if Energy and Mineral Development (MEMD) as also expressed in their letter to BEL of 2 June 2010 in which they recognise that BEL already advanced the funds to the Busoga Kingdom to carry out the construction of the shrines and performance of relocation ceremonies that as a way forward suggests BEL to provide for the 20.000 USD extra budget proposed by the Busoga Kingdom. Moreover they suggest that BEL could also, in order to avoid problems hire a local contractor to finish the construction of the works instead of advancing the money. In conclusion of their letter the Permanent Secretary of the MEMD they state that BEL, by providing the extra budget is a worthwhile expenditure to incur to avoid the damage which would occur if the issue of the relocation of spirits is left unresolved.

5.5.4. 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 Lubaale Nfuudu, 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 ensures such "pari passu" treatment between Nabamba Bujagali and Lubaale Nfuudu.

5.5.5. In line with discussion previous 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 Jaja Budhagaali and Lubaale Nfuudu. The agreement also accounts for completion undertakings to avoid any future claims regarding spirits relocation and appeasement.

5.5.6. Subsequently, the EIB-CM has been informed that one of the mediums - Jaja Budhagaali – has not responded to the formal invitation by the Busoga Kingdom to participate to the appeasement ceremonies. However, Jaja Bujagali refused the invitation to participate in the ceremonies, in spite of the invitation by the Kingdom and 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 Jaja Budhagaali, i. e. he does not to want 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 (Jaja Budhagaali and Lubaale Nfuudu) recognising them as the spiritual caretakers of Bujagali spirits.

5.5.7. Moreover, the ceremonies requested by Jaja Bujagali involve a large number of spiritual leaders and people from around the Uganda with an important cost. In this context, it was impossible to ascertain the links and connections of Jaja Bujagali with the people to be invited as well as the means used to communicate in practice.

5.5.8. The ceremonies have now taken place and the shrines have been finished.

5.5.9. The EIB-CM underlines the importance of Jaja Budhagaali as a recognized spiritual leader over the last decades. However, it is limited to recognise that the appeasement ceremonies as requested by Jaja Budhagaali stand as an unresolved issue regarding the Bujagali Hydropower project.

6. THE KALAGALA OFFSET SUSTAINABILITY MANAGEMENT PLAN (KSMP)

6.1. The assessment

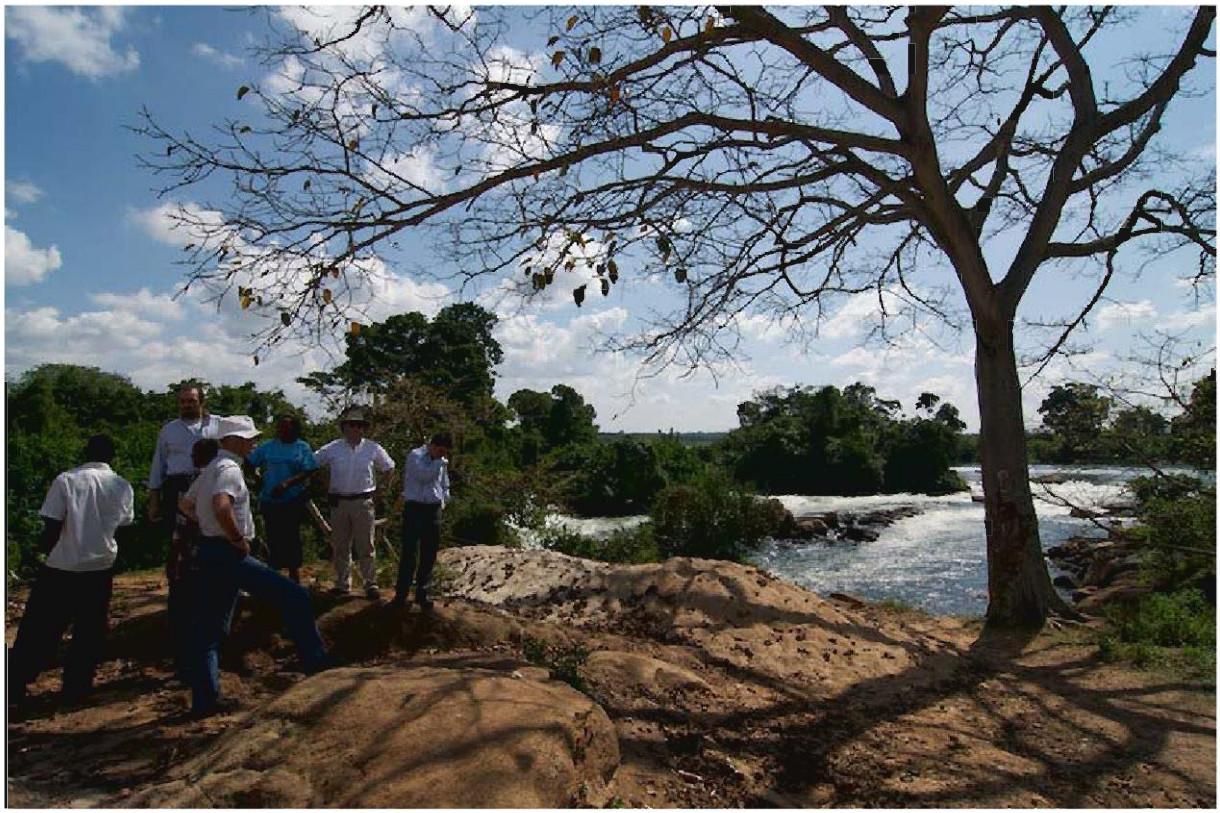
6.1.1. The analysis of implementation issues and recommendations for implementation of Kalagala Offset Sustainable Management Plan was carried out in May 2010. The analysis involved reviewing the SMP document and associated literature and consultations with the lead agencies.

6.1.2. This chapter analyses and identifies issues/gaps on 21 issues. These issues are presented under two broad areas: Practical and financing gaps (section 3.1) and, implementation challenges (Section 3.2). The report provides general recommendations under section 4. A section 5 and 6 analyzes the Risks and sustainability strategies reflected in the SMP. Section 7 presents the conclusion.

6.1.3. The assessment takes note of the fact that the SMP has been approved by Government of Uganda, implying that implementation is now due.

6.1.4. The objectives o the assessment were to:

a) Carry out Gap-analysis of the SMP for the Kalagala Offset with special focus on practical and financial gaps related to SMP implementation.
b) Identify possible problems concerning the implementation of the SMP.
c) Generate recommendations that can ensure best implementation of the SMP.



Visit of the Kalagala Offset

6.2. Background

6.2.1. The Kalagala Offset Sustainable Management Plan (KSMP) (2009 – 2018) was finalised in November 2009 and send 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-CMfact 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-CMurged them to not only approve as soon as possible but to also allocate sufficient funds to its implementation. The KSMP was approved in April 2010.

6.2.2. The KSMP derives its legality from the Constitution of Uganda 1995 which provides the basis for Government of Uganda to enter financing agreement 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, government may borrow from any source. In this regards, the GoU entered the Indemnity Agreement No. B-0130-UG (Indemnity Agreement (partial Risks Guarantee for the Private Power Generation (Bujagali) Project between International Development Association (the Association) and Republic of Uganda (Uganda) in July 2007. The Agreement was entered 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 amounting to US$ 115,000,000 to support a portion of the financing of the BHP.

6.2.3. This means that the World Bank identified the concerns raised by the complainants before entering into a loan agreement for the BHP and the EIB-CMacknowledges their commitment after having had discussions with World Bank staff confirming they are closely monitoring the implementation of the KSMP. It appears also that the World Bank has a dedicated budget for the KSMP and indeed has a senior environmental specialist located in Kampala fully dedicated to the KSMP. Furthermore this senior environmental specialist informed the EIB-CMthat if need be the World Bank might entertain a funding request although he does not anticipate funding problems as the project is within the fiscal years budget that was approved in June 2010. Furthermore they informed the EIB-CMthat the National Forest Authority (NFA) has been formally given the mandate and funding to implement the KSMP.

6.3. Financing the implementation

The KSMP is a long term undertaking whose sustainability may not easily be predicted now.

Relevant procedures for budget allocation to the implementation of this plan must be applied so as to permit government finance the implementation of this plan. In principle, the following legal steps must be applied:

a) Cabinet approval as priority government programme to be financed wholly or in part by government.
b) Lead Ministry Policy Statement for including the SMP budget within the lead ministry budget allocation.
c) Parliament approval of the budget allocation.

The KSMP is expected to be funded by the GoU and Private Sector investments in tourism sector. Additional financial support may be provided by Development Partners and Global Biodiversity conservation financing mechanisms. KSMP budgets for government funding will be approved in accordance with government budget management procedures.

Presently, the Budget framework paper (BFP) for the Ministry of Water and Environment (2010/2011) includes KSMP as unfunded priority. The Ministry of Water and Environment 2010/2011 (Page 29) provides for KSMP implementation.

Potential Gaps:

a) Whereas the GoU through the Ministry of Water and Environment has approved the KSMP, there might be need to secure financing approval by the Ministry of Finance, Planning and Economic Development
b) Funding arrangements for the cross-cutting issues and for activities suitable to be implemented by non-state actors such as NGOs are not properly defined.

Challenges/issues

a) The KSMP is not included among the short term and long-term outputs. There is need to strengthen the rationale in the BFP policy statement so that it gains ground and gets to be continuously budgeted for reported on.
b) The KSMP implementation is not reflected in the MTTI budget Framework paper for 2010/2011.
c) The Tourism Private Sector (mainly Adrift) and BEL are financing actions related to community development, environment protection, ecotourism development and marketing, forestry management.
d) The NFA is financing over-all forestry management and conservation of CFRs
e) Districts are financing rural development (agricultural based, infrastructure development, environment management etc.).
f) Long-term Financing Strategy and modalities. The KSMP commits to develop this strategy as an output.
g) Measures/mechanisms for the following are not yet in place:
    I. Integrating the KSMP budget into institutional budget allocations, including BEL SEA
    II. Generating and management of revenues from Payment for Environment Services
    III. 5Financing non state actors (especially NGOs) participation in the KSMP implementation
    IV. Processing access to Global Environment/biodiversity conservation mechanisms including CDM, REDD, Carbon Funds, Climate Challenge Funds, etc

6.4. **Relationship with other plans**

The KSMP seeks to add value to existing management plans (such as those for the CFRs, District Development Plans, Sectoral land (e.g., PMA, Tourism Plans, Investment Plans, Fisheries, Water, Energy and Social Development) among others. The KSMP provides a framework for its integration into these spectral plans.

Potential Gap:

There is need for a binding mandate giving the KSMP due recognition by all ministries and sectoral plans. Failure to achieve this might hamper the integration. Such binding mandate could be provided through a Cabinet decision.

6.5. **Coordinating KMSP implementation**

The KSMP implementation will require actions by various institutions: Sector ministries (MWE, MEMD, MAAIF, MGLSD, MoLG, etc.); Lead Agencies (NEMA, NFA, etc.); Districts (Kayunga, Mukono, Jinja) and other stakeholder (Private Sector, NGOs and Cultural Institutions) at different levels.

Section 4.5 of the KSMP describes the coordination structure and mechanisms. This structure will be serviced by the KSMP implementation Unit within Ministry of Water and Environment.

There is a risk this coordination could fail but it could be addressed through a strong M&E framework, strengthening capacity of coordinating institution to convene and bring into action different players, and through the various coordination and supervision mechanisms.

Potential Gaps:

a) There is need for an effective delegation of implementation responsibility by the Lead ministry. Specific delegation instruments (e.g. letters) are required to assign the delegated responsibility and budgets
b) KSMP Implementation procedures (Guide/Manual) do not seem to exist
c) There seems to be a need for capacity building to ensure effective Monitoring and Evaluation (M&E) in order to support the multi-sector KSMP implementation

6.6. Institutional structures

In order to ensure long-term sustainability of the impacts of the KSMP, the following strategies are included in its design and implementation approaches:

a) Institutional development and strengthening: A key element of the KSMP implementation approach will be to strengthen institutional capacities, and build mechanisms for collaboration between and among lead agencies and collaborating institutions including NGOs and Private Sector. The KSMP will contribute to institutional strengthening through imparting technical skills and the development of appropriate management and organizational systems, and procedures for collaborative action at ecosystem level.
b) Integration of KSMP activities and budget into host/implementing institutions:KSMP activities and budgets will be integrated into the programmes, budgets and operations of implementing organizations rather than creating separate structures. This strategy will ensure more efficient allocations and use of resources for identified priority activities, for which capacity exists or can be created to sustain them even without the KSMP. KSMP actions will be integrated into the Management Plans for the CFRs, District Development Plans, BEL SEA, and such other sectoral plans

The Ministry responsible for Water and Environment (MoWE) will lead implementation of the KSMP because of a) its mandate over management of water, forestry, wetlands, and environment which account for the biggest percentage of the outputs of the KSMP and b) agencies responsible for the management of these resources fall under this ministry. Annex VIII of the KSMP provides specific roles and responsibilities).
Sector plans will be implemented by their respective lead institutions as follows;

a) NEMA will coordinate environmental policy in reference to riverbanks, islands and environmental standards.
b) MTTI will implement the Ecotourism Plan.
c) NFA will implement the CFR Management Plans
d) Districts will implement decentralized natural resources functions in reference to wetlands, environment, non-protected forest resources and land use and land management, among others.
e) MoGLSD (in collaboration with Cultural Institutions) will manage cultural resources.
f) NGOs /CSOs and Private Sector will be engaged appropriately.

Potential Gaps:

a) There seems to be no mechanism for coordinating the various ministries and agencies and ensuring synergistic approaches
b) There seems to be no mechanism for engaging non-state actors.

6.7. Performances, collaboration and supervision

KSMP implementation will seek participation of the relevant stakeholder institutions, both government and non-government, at all levels. This collaboration targets to capture synergies, harmonize mandates and solicit resources for increased impact. This aspect will be enhanced through the development of tools and procedures for collaboration and joint action.

Various institutions and their corresponding mandates and delegated responsibilities (between the centre and districts) will be active in KSMP implementation. However, as expected, these institutions shall exhibit different levels of performance and collaboration.

Potential Issues:

a) There should be measures for ensuring effective coordination between the various institutions
b) Monitoring and evaluation systems for tracking performance as well as capture and share lessons should be established
c) Appropriate financial and management accountability systems need to be set up

6.8. Information management and reporting

The KSMP indicates that there is inadequate ecological social and economic information regarding the Mabira ecosystem and that available information is scattered in different data systems, and unsuitable to use when drawing comparative analysis and trends. Further that this state of affairs limits the opportunity to plan and monitor the ecosystem goods and services. It also underscores the need for information sharing among and across various stakeholders and sector interests.

The KSMP proposes quarterly reporting according to government procedures. Reports will be consolidated and shared with the KSMP Steering Committee (KSC), annual conference and implementing partners.

Potential Issues/Gaps:

a) *Thought should be given to establishing and hosting of a database*
b) *Baseline surveys should be conducted to establish the biodiversity and socioeconomic parameters against which KSMP impacts would be later measured*
c) *Compliance to reporting requirement hence the need for reporting formats and incentives for ensuring compliance*

6.9. Monitoring and Evaluation

KSMP implementation will be closely monitored and evaluated to assess progress and address shortcoming as they arise. One of the principles of this Monitoring and Evaluation is action learning and integration of lessons learnt and experiences into subsequent work plans and implementation approaches.

Section 5 of the KSMP provides the M&E Framework that seeks to engage all stakeholders in its implementation. The M&E is more concerned with the programme of work. Besides the KSMP, there are ongoing and expected future development works that will not fall under the KSMP but that will have implications for the intended impacts of the KSMP.

Potential Issues/Gaps:

a) *Capacity building for all stakeholders, especially the communities to monitor and seek accountability*
b) *Mechanisms for recognising monitoring information and providing feedback to the stakeholders should be established*
c) *Capacity to monitor other non-SMP developments and analyse their implications for the KSMP*

6.10. Non- state actors engagement

According to section 4.4 of the KSMP, Ministry of Water and Environment MoWE shall delegate implementation mandates and resources to lead agencies consisting of central government ministries or lead agencies, districts, CSOs/NGos, Private Sector as appropriate. Further, section 4.5.2 provides for NGOs/CSO participation in the KSC.

Potential Issues/Gaps:

a) *Budget provision or mechanisms for supporting NSOs/NGOs...or facilitation of NGO/CSO work*
b) *Mechanisms for delegating assignments to NGOs/CSOs*

6.11. International Waters

The management and use of River Nile waters is influenced by international law, in this case the Nile Treaty/Cooperation Framework 2010. Presently, the major forms of water use that warrant attention by internal law is the future hydropower development at Isinga island downstream from Itanda/Kalagala Falls and management of the riverbank

Potential Issues/Gaps:

a) *Ensuring that future hydropower developments on the Nile do not undermining the requirements to retain the Kalagala and Itanda falls area in their ecological conditions, in accordance with the Indemnity agreement.*
b) *Measures for management and utilisation of the riverbank according to the environment law and regulations.*

6.12. **Biodiversity conservation**

Information of biodiversity in Mabira ecosystem is limited but the ecosystem is believed to be rich in species diversity and abundance. Available information is biased towards the Mabira CFRs and trees, birds, butterflies, moths and small mammals. It is largely believed that the water of Nile and the less disturbed natural systems (islands, wetlands, forest patches and Nile waters) are rich in biodiversity.

Potential Issues:

a) *Biodiversity conservation action is curtailed by lack of information.*
b) *Justification of existence of CFRs is undermined by the present state of CFRs whose natural conditions have been degraded.*

6.13. **Ecotourism developments**

According to the Ecotourism Development Plan 2010, the Mabira ecosystem is classified under the Capital Area Zone of the Secondary Tourism Zone. The destination is ideal for visitors because of its association with source of the Nile, and its proximity to the Kampala-Jinja-Mukono-Entebbe urban areas. Tourism is of great potential in the Mabira ecosystem extending from River Nile, Kalagala Falls, Griffin Falls, Itanda Falls, the Islands, Caves of Nakalanga, Kiwaala Falls Cultural heritage, Tropical Forest rich in animal and plant species, high aesthetic potential to the undulating hills and wide valleys around Lake Victoria crescent.

The ongoing tourism activities include: white water rafting, bird watching, bungee jumping, nature trails/walks, cultural tourism, horse riding, spot fishing, primate viewing, e.g. Ecotourism is considered the best tourism scenario that could address the fragile nature of the ecosystem while meeting community expectations. It also intends to address the traditional use of resources, notably the cultural resources, aesthetic values, water based leisure activities and sustenance of "existence values" attached to the Kalagala and Itanda falls by the communities.

Potential Issues/Gaps:

a) *Enhancing Cultural based ecotourism potential*
b) *Developing Water based ecotourism activities, in addition to water rafting*
c) *Improving access to Kalagala and Itanda Falls site*
d) *Institutional collaboration and supervision of ecotourism*
e) *Adherence to principle of Ecotourism….participation and sharing tourism opportunities by stakeholders*
f) *Utilisation ecotourism development budget under BEL SEA*

6.14. **Community development**

The KSMP recognises community and stakeholders' access and use of resources within the CFRs and within protected zones of riverbank and seeks to promote such access in accordance with relevant laws, policies and regulations. Through regulated access, stakeholders will appreciate and cherish the value of these resources and provide genuine stewardship to these resources.

Benefits from the KSMP are expected in the form of: a) revenues derived from eco-tourism at Kalagala and Itanda Falls Site; and b) hosting the "Offset" on behalf of the upstream communities and the country at large. In the case of the latter, the following community development benefits are expected; employment, improvement of education, road and health facilities, initiating income generating activities, promoting participation in tourism development and business, participation in management of CFRs (tree growing, access to non-timber forest products).

Potential Issues:

a) *Formula for equitable sharing of benefits from development activities associated with KSMP implementation among the three districts of Jinja, Kayunga and Mukono and local communities.*
b) *Capacity to participate in Ecotourism*
c) *Ownership of resources – cultural and other*
d) *Initiating income generating*
e) *Participation in M&E and decision making*

6.15. Management of Cultural resources

There are several cultural resources found within the Kalagala and Itanda falls area, located on the mainland, islands and within the water. These resources have been and continue to be utilised for cultural benefits and services by the communities/residents, despite the fact that some of them fall within the CFRs or can only be accessed via the CFRs. The Forest Policy and Forest Act provides for the management of these resources within a protected area. Indeed forest management plans provide measures to manage these resources. To-date, the legitimate control and management of these assets remains unclear and confusing. There are several actors whose actions and interest seems to be in disharmony. For example, the role of the Kingdoms vis-à-vis the NFA and MoGLSD as stipulated in law and cultural policy is open to interpretation and thus can be confusing.

Potential Issues/Gaps:

a) *Clarity on legal ownership and management of cultural and spiritual sites.....unless done so according to the law.*
b) *Development of mechanisms for regulating or providing guidelines on access and use by all stakeholders*
c) *Undertaking/promoting sustainable development/management activities at cultural sites.*





Sacred tree at Kalagala Offset

6.16. **Recommendations**

General

a) Establish the Implementation Unit within the MoWE including resources (staffing and facilities).
b) Establishing KSMP implementation and coordination systems and procedures (Implementation Manual).
c) Consolidate management control over the resources and processes within Kalagala and Itanda Falls area in order to address important and urgent matters to deal with law enforcement, illegal activities and over-all management presence.
d) Managing conflicts over resources use and control (cultural assets, CFR resources and boundaries).

Policy and legal instruments

e) Policy & legal Framework for the KSMP.....and for recognising Management of Mabira ecosystem as a Unit
f) Policy and legal framework for entrenching the Indemnity agreement into Law

Financing arrangements

g) Develop and apply long-term financing strategy
h) Strengthen position for KSMP in Budget Framework Papers for MWE, MTTI and MGLSD for the short and medium term outputs

Cultural resources management

Design and implement Process framework for the Cultural issues of Kalagala and Itanda in order to address:

i) Ownership and management responsibility over cultural and spiritual sites in the area by line ministries and cultural institutions.
j) Apply and implement Process Framework approach to provide mechanisms (guidelines) for all stakeholders engagement that ensure access and user rights of communities, and clearly define the ownership and management of these resources.



Offer site at the bottom of the sacred tree,Kalagala Offset

Community development

Prepare Community Development Plan that addresses:

k) Access and use of forest resources
l) Access and participation in Ecotourism
m) Modalities for sharing benefits



Offer site in the Kalagala Offset

Institutional capacities (mandates, collaboration and participation)

Carry out capacity Needs assessment and develop Capacity Development Plan, highlighting the following areas among others:

n) Monitoring and evaluation
o) Institutional collaboration
p) Enforcement and monitoring compliance to policies and laws/regulations
q) Ecosystem management approach

Biodiversity conservation

Develop and implement biodiversity management plan that addresses among others:

r) Biodiversity information management (data collection/inventories/baselines, analysis, storage and retrieval and sharing mechanism)
s) Strategies for financing biodiversity conservation (PES) or other

Ecotourism

t) Streamline stakeholders participation in ecotourism development and remove elements of monopoly
u) Enforce compliance to environmental standards and strategies in the approved Ecotourism Plan
v) Finance the Plan...integrate it into the Investment Plans for the ministry
w) Develop and Implement a mechanism for sharing of benefits from ecotourism with the communities, sub-county and districts

Integrating KSMP into District Development Plans

x) Initiate development of DEAPs to reflect the KSMP priorities and needs
y) Develop and implement District Wetlands Action Plans



Illegal constructions in the Kalagala Offset

Integrate KSMP in socio-economic

z) Conduct Cost and Benefit Analysis for Kalagala the offset.



Fence and illegal construction at Kalagala Offset

7. BACKGROUND INFORMATION

7.1. Timeline of events

SG/E/2009/09 BUJAGALI PROJECT TIMELINE	
General Project Overview	
Mid-1990	The project has been developed since the mid-1990s by US-based AES Corporation, appointed by the Government of Uganda to implement the project
1999	Government of Uganda(GOU) commissioned AES Nile Power (AESNP)
2001	AESNP withdrew in 2003 after completion of significant technical development work and implementation, with the Government, of the resettlement programme for residents in the project area.
2004	The project was put out to international tender in 2004 based on three criteria: return on equity, amount of development costs and yearly operating costs
2005	Project restarted and GOU divided the Project into 2: - Bujagali Hydro Power: (BHP) Bujagali Energy Ltd. (BEL) was commissioned. Bujagali Electricity Ltd. (BEL), a special purpose company established by the project sponsors - the Aga Khan Group and World Power Holdings (WPH), a power plant developer majority owned by private equity funds managed by Blackstone Capital. - Bujagali Interconnection Project (BIP): UETCL
December 2005	Dam's construction and operation was signed
2011	Expected commissioning the dam in 44 months
	BHP project civil works are 50% complete and a 10 months extension is envisaged. Implementation of the BIP is proceeding on schedule. It is 48% complete and completion date is still scheduled for July 2010.
31.01.2012	Expected Completion date
EIB Bujagali Project Overview	
24 June 2004	Fact Sheet B : financing proposal of the cancelled Bujagali project (2003-0300)
30.06.2010	Preliminary Information Note-Bujagali Project (2005-0357)
22.12.2006	Publishing EIB website
13.09.2006	Fact Sheet A
26.02.2007	Three NGOs (International Rivers Network (IRN), National Association of Professional Environmentalists (Uganda) and CEE Bankwatch Network) approached the Bank on 26 February 2007 criticising the Bujagali project for not complying with the recommendations of the World Commission on Dams (WCD)
21.03.2007	PJ appraisal report
28.03.2007	CRD Opinion
29.03.2007	Fact Sheet B
03.04.2007	CD Decision FSB
26.04.2007	IF Committee/Art 14 Meeting
23.04.2007	CA Submission Deadline
09.05.2007	CA Decision EIB CA approved a senior loan of up to USD 130m with a maturity of up to 20 years and grace period of up to 5 years for the Bujagali Hydroelectric Project subject to the Management Committee's approval of the final terms and conditions of EIB's participation. The loan will be funded under the Investment Facility.
14.12.2007	EIB Date of Signature
EIB CM Investigation	
2.12.2009	Date of Submission of the Complaint by Ms Caterina Amucci, on behalf of Counter Balance coalition, NAPE, CLAI and Association Sherpa (hereinafter the complainant)
02.12.2009	Date of Reception of the Complaint
16.12.2009	Date of Acknowledgement Letter
16.06.2010	EIB Final Reply
14.01.2010	CM Mission to Paris: Meeting with representatives of the European complainants/CSOs

06.02. 2010- 12.02.2010	CM fact Finding Mission to Uganda: the following is the brief agenda: - Meeting with NAPE on 6/02/2010 - Meeting with IUCN (Alex B. Muhweezi) on 7/02/2010 - Meeting with Charles Dalton Opwonya (compensation cases on T-lines settled out of court + intention to lodge a complaint against Bujagali Dam) on 7/02/2010 - Meeting with the Ministry of Energy: Acting PS, Commissioner for Energy (James Baanabe), Uganda Electricity Generation Company Ltd Environmental Specialist (Moses Otim) + Project Monitoring Committee + Cultural Consultant on 8/02/2010 - On-site inspection at BEL-Salini on 9/02/2010 - Jaja Budhagaali – Naminya Resettlement + Malindi Resettlement (Compensation and Blasting) on 10/02/2010 - visit to Kalagala Offset (including Kabaka Tree) + meeting with Bel on 11/02/2010 - Meeting with M. Fodor – World Bank Senior Environment Specialist + Wrap-up meeting at the Ministry of Energy+ NAPE+Meeting with EC Delegation in Kampala+ UECTL+CHEC on 12.02.2010
23.03.2010	CM meeting with the World Bank Inspection (Roberto Lenton, Peter Lallas)
24.03.2010	CM meeting with the World Bank operational staff in Washington (Stephen Lintner)
10.05.2010	CM meeting with World Bank operational staff in Luxembourg (Stephen Lintner)
26.05 – 02.06.2010	CM Mission to Uganda Purpose: Detailed assessment of some of the areas under complaint with experts
World Bank Inspection Panel (IP) 2002 Investigation	
2001	Request filed-WB assistance not approved
26.10.2001	Approval of IP recommendation to investigate
28.12.2001	Ongoing investigation-a guarantee facility not exceeding 115 Million dollars approved
17.06.2002	WB Board of Executers met to discuss IP report
September 2003	The Project halted due to the financial problems of the Project sponsor
January 2004	Government of Uganda initiation of a competitive bid
April 2005	New Project Sponsor consortium (Industrial Promotion services (Kenya) of the Aga Khan Group and Sithe Global (US)
3.10. 2005	Management sent to the Board a Project Completion Note
IP 2007 Investigation	
1.03.2007	Request sent on by the Complainant
2 .03.2007	Request received
07.03.2007	Request forwarded to the Management
April 2007	Management response to the request
18.05.2007	Approval of IP recommendation to conduct investigation
07.11.2007 -12. 2007	IP Visit to Uganda
December 2008	World Bank Board endorsed an action plan for addressing issues identified in the inspection process
July 2009	Issue of status report for WB Board
15.09.2009	The first progress report was submitted
Ongoing	Preparation of a field mission for the Second Progress Report to IP Board on the implementation of the Management Action Plan responding to the Bujagali Inspection Panel
CAO (IFC)	**Bujagali-02/Bujagali Falls**
01.11.2000	Date of File of the Complaint lodged by National Association of Professional Environmentalists
April 2001	Public consultations were held widely before and after the release of the Environmental Impact Assessment
September 2001	The Assessment Report completed 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
January 2005	The complaint was closed
CAO (IFC)	**Bujagali-03/Canada**
01.07.2001	Date of File of the Complaint lodged by Mr Alfred Bageya, a Ugandan born Canadian. The complainant alleged that the Bujagali Falls in general, and his grandfather's site in particular were in fact sacred sites that ought to be preserved. Finally, the complainant asserted that the project failed to comply with World Bank Group policies in relation to burial sites and protection of indigenous culture and traditions.
September 2001	The Assessment Report completed CAO later concluded that the evidence provided by the complainant could not be verified. Accordingly, the complaint was closed in January 2005.
January 2005	The complaint was closed
African Development Bank Investigation	
2.05. 2007	The AfDB Board approved a private sector loan of USD 110 million for the BHP
16.05.2007	Request for IRM received by CRMU
4.06.2007	Compliance Review and Mediation Unit (CMRU) registered the Request for Inspection
27.06.2007	A proposal to provide an ADF loan of UA 19.21 million for the BIP is scheduled for presentation to the ADF Board
28.06.2007	Management Response received
July 2007	The CRMU notified AfDB's Management and received its response to the Request
24.08.2007	the Eligibility Report recommending a Compliance Review of BHP and BIP to the Boards of Directors for No objection on a lapse-of-time basis by 6 September 2007
6.09.2007	No member of the Boards of Directors had submitted any objection to the recommendations of the Eligibility Report.
7.09.2007	President's or Boards of Directors' decision to proceed with Compliance Review
29.10.2007	Review Panel starts Compliance Review
20.06.2008	Compliance review issued
9. 07.2008	The Boards of Directors of the African Development Bank Group, chaired by the President of the Bank, met on July 9, 2008 in Tunis to discuss the findings of the Independent Review Mechanism's Compliance Review Panel's Report on BHP and BIP Conclusions: 1. Adoption of the Compliance Review Report incl. its findings 2. Instructions for preparation of two action plans: a. The first action plan responds to the Panel's recommendations on the Bank's policies and procedures. b. The second one deals with the Report's actionable project-specific findings on non-compliance and areas of concern. c. Finally, the Boards approved the Panel's recommendation that the Independent Review Mechanism monitor the implementation of the project-specific action plan.
March 2009	ADB Management Action Plan
22.07.2009	Independent Review Mechanism 1st monitoring the implementation
22.05.2009	Discussion/Approval of Action Plan of the Management Action Plan in Response to the Independent Review Panel's Report on BHP and BIP
24 – 29.05.2009	IRM Monitoring Team conducted a mission to Uganda from
22.07.2009	This Joint Lenders regular supervision mission has sought to address outstanding issues raised by the IRM Monitoring Team in their 1st Monitoring Report
26.08.2009	1st IRM Monitoring Report dated 22 July 2009 issued to the Boards President, Requestors and published on the IRM Website
28.07.2010	2nd IRM Monitoring Report dated 22 July 2009 issued to the Boards President, Requestors and published on the IRM Website
Joint Lenders Supervision	
10 - 16.03.2008	First Joint Lenders Mission

28 - 30.10.2008	Second Joint Lenders Mission
24 - 27.03.2009	Third Joint Lenders Mission
09 - 13.11.2009	Fourth Joint Lenders Mission
12 - 15.04.2010	Fifth Joint Lenders Mission
07 - 12.11.2010	Sixth Joint Lenders Mission
04 – 07.04.2011	Seventh Joint Lenders Mission
04 – 07.04.2011	Eight Joint Lenders Mission
07 – 10.05.2012	Ninth Joint Lenders Mission

7.2. Bujagali Environmental Monitoring Committee (BEMC)

7.2.1. One of the conditions in the approval of the environmental aspects of the BHP was the need to put in place a project monitoring committee. Principally, the BEMC is to provide oversight in terms of compliance with the regulatory conditions and to ensure the identification of measures to mitigate any risks or potentially negative impacts that may emerge from the implementation of the project.

7.2.2. The monitoring frameworks cover Bujagali Hydropower Project and Bujagali Interconnection Project (Transmission Line). BEMC is required to hold its meetings and inspections at least once every quarter.

7.2.3. NEMA being the secretariat to the committee spearheaded its formation in early 2009 and hosted the inaugural meeting on 4th March 2009.

7.2.4. The second committee meeting and site inspections were held in April 28th – 29th 2009, in Jinja, financed by German Technical Cooperation (GTZ) through the Ministry of Energy and Mineral Development. During this meeting and site inspections, the Committee recommended the development of a Monitoring Framework, by a select Sub Committee of six members drawn from NEMA, MEMD, UWA, DLG, and the Chairman of BEMC. Subsequently, the select Sub committee developed 2 Monitoring frameworks in a retreat held at Sunset International Hotel Jinja, from 25th to 29th May 2009, again financed by the German Technical Cooperation (GTZ) through the Ministry of Energy and Mineral Development.

7.2.5. The last Committee meeting was held in April 2009. During the meeting of the EIB-CMheld with the BEMC on 8 February 2010 it became evident that no further meetings were held since April 2009 due to apparent lack of financial resources. As a consequence BEMC was defacto inactive and did not conduct any meetings and conducting site inspections. The EIB-CMis pleased to see that shortly thereafter the required financial support was provided and the BEMC was able to continue its mandate. The BEMC held its third Committee meeting and second Inspection visits during the month of March 2010.

7.2.6. According to their report the during the last meeting and inspections that lasted two days, Sub Committees were formed as shown for purposes of improving efficiency and effectiveness. Consequently field work and respective issues may be handled at Sub Committee level.

7.2.7. The Committee meeting took place on Tuesday 9th March 2010 at NEMA House, main boardroom and field Work was conducted on Wednesday 10th and Thursday 11th March 2010. A wrap up and debriefing meeting was held on the afternoon of Friday 12th March 2010, together with the developers to agree on the way forward on issues arising out of the inspections. As part of the inspections the Committee met Officials from Busoga Kingdom to discuss cultural aspects of the project. The Committee also met Labour complainants after they requested the Committee to intervene.

7.2.8. The EIB-CMnotes the extensive work performed and the action plans prepared by the BEMC and believes that it is very important that this committee maintains its functioning and receives support to remain effective.

7.2.9. During the EIB-CMvisit in July 2010 NEMA assured their continued commitment to provide financial support for the functioning of the BEMC.

7.3. Panel Of Environmental and Social Experts (PoESE)

7.3.1. The 7th site visit of the Panel of Experts for Bujagali Hydropower Project was carried out from June 20 to 26, 2010.

7.3.2. As part of the conditions for receiving external financing from the IFC, BEL commits to comply with IFC's environmental and social policies. These policies require that Category A projects *"that are highly risky, or contentious, or that involve serious and multidimensional environmental concerns, the projects sponsor should normally also engage an advisory panel4 of independent, internationally recognized environmental specialists to advise on all aspects of the projects relevant to the environmental assessment*".

7.3.3. According to IFC's environmental and social policies, such panels are expected to "advise the projects sponsor on the following aspects as appropriate: (a) the terms of reference for the environmental assessment; (b) key issues and methods for preparing the environmental assessment; (c) recommendations and findings of the environmental assessment; (d) implementation of the environmental assessment's recommendations; (e) development of environmental management capacity; and (f) engineering matters, such as dam safety."

7.3.4. BEL entered into contracts with Kerry M. Connor, Ph.D. and Dr. Robert Zwahlen, Social and Environmental Experts to serve as the two members of the PoESE. Their first report was issued in February 2007. All reports are available on BEL's website http://www.bujagali-energy.com/poer.htm.

7.3.5. According to their remit of the PoESE the reports are prepared by for the use of BEL in support of BEL's own consideration of whether and how to proceed with the recommendations of the reports. As a consequence the reports may not be relied upon by others.

7.3.6. According to the PoESE reports: "This report is integral and must be read in its entirety. Neither the Panel nor any person acting on its behalf assumes any liability to any party with respect to the use of or for damages resulting from the use of any information contained or opinions expressed in this report. This notice must accompany every copy of this report."