

*The European Ombudsman
1 Avenue du Président Robert Schuman
CS 30403
FR-67001 Strasbourg Cedex
France*

14 November 2011

Subject : Complaint against the European Investment Bank for maladministration

Dear Sir,

On 2 December 2009, CRBM, NAPE, Counter Balance, Sherpa, CLAI, as well as individual citizens of Uganda ("**the Plaintiffs**") filed a complaint through the European Investment Bank ("**the EIB**") Complaints Mechanism regarding the environmental and social impacts of the Bujagali Dam in Uganda, a project co-financed by the EIB (see attached complaint – "**the Complaint**"). The full text of the Complaint is attached in **ANNEX 1**.

According to Section 10 of the EIB Complaints Mechanism Rules of Procedure :

"10.1 The EIB Complaints Office will ensure that imposed and/or agreed delays and notices are respected.

10.2 The final reply must be sent to the complainant by no later than 40 working days and after the date of the acknowledgement. For complex issues, or for reasons beyond the sphere of influence of the EIB Complaints Office, the deadline for providing a final reply may be extended, after having informed the complainant thereof for an additional maximum period of 100 working days. Complainants lodging complaints in EU languages other than the working languages of the EIB (French and English) may be faced with increased deadlines due to translation delays.

10.3 In cases of problem solving the deadlines may be extended in consultation with the complainants in order to allow for comprehensive stakeholder engagement and to manage legitimate expectations."

However, to this day – that is, almost two years after the filing of the Complaint –, and despite regular promises to do so, the EIB Complaints Office has still not officially addressed the Complaint and the Plaintiffs have still not received the final Conclusions report.

Ever since the filing of the Complaint, a number of meetings and exchanges took place between the Plaintiffs and representatives of the EIB Complaints Office ("the **CO**" or "the **Office**").

A first meeting took place in Paris between representatives of the EIB Complaints Office, Counter Balance, Sherpa, CLAI and Friends of the Earth on 14 January 2010, in view of the

upcoming EIB Complaints Office's field mission in Uganda. During that meeting, the EIB Complaints Office verbally committed to keep the plaintiffs informed of the progression and outcome of its investigations. The report of the meeting is included in **ANNEX 2**.

After the kick off meeting, the Plaintiffs and the complaint officers had a regular communication through e-mail, telephone and additional meetings. Caterina Amicucci, from Counter Balance / CRBM, was taking care of the communication on behalf of the Plaintiffs. A full record of the correspondence is included in **ANNEX 3**. The main steps are summarized below:

- On April 16th, 2010, the CO informed the Plaintiffs about the planned field mission in Uganda and sent a document highlighting the areas of concern regarding the negative environmental/social impacts of Project Implementation. Because the CO stated that this was a *“working paper only and as such cannot be disclosed to other third parties or the public”*, we have not attached that draft paper to the present complaint to the Ombudsman. However, should the Ombudsman need to review that document, we remain at your disposal to disclose it, if the CO agrees.
- On May 16th, 2010, the CO informed the Plaintiffs of its intention to hire experts and undertake a new field mission in Uganda. Again the office asked for confidentiality of the information shared.
- On June 16th the CO informed the Plaintiffs that *“In view of our recent visit to Bujagali and the still ongoing work by the experts and ourselves we have decided that we will not issue a conclusions report and reply at the foreseen deadline but only after we have all the information needed”[....] “This means that we will hopefully be in a position to provide you with a draft report for comments in September 2010.”*
- On October 19th, 2010, the CO informed the Plaintiffs that *“We are working on it but with at one point 27 open complaints with limited resources as well as wanting to give all the complaints the appropriate attention I hope you can appreciate that this is not easy! We do hope however to have a draft ready for circulation soon.”*
- On November 16th, 2010, the Plaintiffs wrote to the CO the following: *“I fully understand that it is not easy to handle all these complaints at the same time and we really appreciate your effort but our workplan on Bujagali is six months late now and we would like to do some planning. We can also live with an interim document not for circulation, at least to have an idea on where the bank stands so far.”*
- On February 23rd, 2011, the Plaintiffs wrote again to the CO: *“we are still waiting for the report, despite we recognize your commitment in delivering a good and comprehensive report and we appreciate it, it is really taking very long. It is now 14 months that the complaints has been lodged and we would be glad to have a certain date for the release of the report”*
- On March 1st, 2011, the reply of the CO is: *“We are circulating our draft for internal comments and discussion this week and hope to be able to send a draft to all external stakeholders for comments by the end of the month.”*

- On April 5th, 2011, the Plaintiffs enquired again the CO *“the deadline of March is once more over. We would be glad to receive a definitive date for the report's disclosure. You can understand that if the report will not be disclosed soon we'll transfer the case directly to the Ombudsman”*

- On April 7th, 2011, the CO responded *“In follow-up on our conversation yesterday please be informed of the additional delay regarding the issuing of the report. Please note that we are updating the draft report with the latest information/developments and are also still discussing internally with the operational services”*

- On May 28th, 2011, Counter Balance organized a joint meeting with the EIB complaint Office and the European Ombudsman Office to understand how to proceed with the complaint. The CO informed Counter Balance that there are structural problems with the functioning of the mechanism, and strong resistance from the internal services, while the mechanism has support from majority of the EIB Management. The problems come from the fact that there are no operational procedures on how the mechanism functions, they decided to create such, which at the moment are in process of finalisation. These guidelines will establish also the procedures with a more clear timeline, and will allow them to ignore the resistance if the internal services.

They expect that Management will approve them on the 7th June, after which they will send the procedures to the Ombudsman for comments, and if there are questions or delays, probably they will be voted on the next Management meeting, so before the summer break (or right after). They expect to release the report right after the approval of the operational procedures.

- On July 25th the plaintiffs approached again the CO *“following up our June's meeting with Mr. Alcarpe at the EO office, we would like to have some updates concerning the approval of the internal procedure, the state of Bujagali report”* and the response of the office is *“On Bujagali, status remains the same. We are awaiting the EO's comments on our operating procedures as the guardian of our complaint mechanism before we can move forward as we cannot fight too many battles at the same time!”*

- the Plaintiffs then met the CO twice, for the preparation of the event with the civil society organisations and in the event of the 18th of October. Operational procedures have not yet approved and no certain date has been indicated by the CO to date.

- Finally, on October 27th, 2011, Caterina Amicucci, on behalf of the Plaintiffs, informed the CO that if the report were not released by November 1st, the Plaintiffs would appeal to the European Ombudsman – to which the CO merely reiterated, by email dated the same day, that *“the EIB Complaints Mechanism endeavours to finalise the report on the Bujagali Hydroelectric project complaint under the current circumstances as early as possible”*.

Accordingly, the EIB failed to address the Complaint in accordance with the deadlines set out in Section 10 of the EIB Complaints Mechanism Rules of Procedure, and in any event within a reasonable time. The complexity of the case does not justify a 2 year delay. In fact, it appears from the correspondence from the EIB Complaints Office that these delays were not so much due to the complexity of the case but rather to lack of resources, as well as internal difficulties and obstructions within the EIB. This is a clear case of EIB maladministration.

Furthermore, in the meantime, the Bank kept disbursing money to the Bujagali dam project. At the time of the filing of the Complaint, the EIB had disbursed 42,5 million Euros out of the total amount of the agreed loan (95 million Euros). Amongst the requests set out in the Complaint, the Plaintiffs had asked the EIB not to disburse any more money until their concerns were addressed. Nevertheless, while the investigation and the issuance of the final Conclusions report kept being delayed, the Bank continued to support the project and by January 2011 another 40 million Euros were disbursed by the EIB for the Bujagali dam.

In parallel, the construction of the dam has continued to move forward and is now almost completed, thus making it more difficult to remediate and/or mitigate the negative impacts of the dam on the environment and on affected communities.

The EIB's procrastination has therefore undermined the rights of the Plaintiffs under the EIB Complaints Mechanism and rendered their action under this mechanism meaningless. It is obvious that the Bank is reluctant to issue its final Conclusions report on the Complaints and that internal maladministration within the EIB prevents the effective implementation of the EIB Complaints Mechanism.

Accordingly, the Plaintiffs hereby request the European Ombudsman, pursuant to Section V of the EIB Complaints Mechanism and to the provisions of the Memorandum of Understanding between the European Ombudsman and the European Investment Bank, to:

- intercede with the EIB so that the final Conclusions report prepared by the EIB Complaints Office be released before 2 December 2011;**
- issue recommendations so as to prevent future maladministration and ensure the proper and effective functioning of the EIB Complaints mechanism; and**
- in any event, make a special report to the European Parliament on the maladministration committed by the EIB and, more generally, on the shortcomings and dysfunctions of the EIB Complaints mechanism**

The object of the present complaint has not been settled by a court and is not pending before a court. We ask that the present complaint be treated publicly. We agree that our complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it.

We thank you for the attention you will pay to the present complaint and look forward to hearing from you.

We remain at your disposal should you have any questions or need any further clarification regarding our complaint.

Sincerely yours,

Frank Muramuzi, NAPE

Caterina Amiccuci, Counter Balance

Julia Thibord, Sherpa

Maurizio de Martino, CLAI